

# **AGENDA**

## **Ways and Means Committee**

**March 26, 2009**

***Immediately after adjournment in Room 521 Blatt Building***

### **I. General Government, Personnel and Benefits**

(Neilson, Kirsh, M. Smith, White – Staff Liaison – Rena Grant)

- A. House Bill 3254 – Speech Language Pathologist Incentive
- B. House Bill 3396 – Increase General Reserve Fund & Capital Reserve Fund (Constitutional Amendment)
- C. House Bill 3395 – Increase General Reserve Fund
- D. House Bill 3415 – Establishes the Taxation Realignment Commission
- E. House Bill 3721 – Tax Conformity
- F. House Bill 3722 – Department of Revenue Annual tax Bill - Technical Clean-Up
- G. Senate Bill 12 – Establishes the Taxation Realignment Commission

### **II. Sales and Income Tax**

(Littlejohn, Battle, Edge, Lucas, Simrill – Staff Liaison – Katie Owen)

- A. House Bill 3590 – Local Option Tourism Development Fee Act

### **III. Economic Development, Capital Improvement and Other Taxes**

(Herbkersman, Bingham, Cobb-Hunter, Ott, R. Smith – Staff Liaison – Marc Aquino)

- A. House Bill 3148 – SC Rural Infrastructure Act
- B. House Bill 3203 – Dry Cleaning Restoration Trust Fund
- C. House Bill 3268 – Construction and Operation of Toll Roads
- D. House Bill 3730 – Water and Sewer Joint Resolution

### **IV. Property Tax**

(Merrill, Clyburn, Neal, Rice, A. Young – Staff Liaison – Paul Patrick)

- A. House Bill 3018 – Property Tax Exemption On Improvements
- B. House Bill 3272 – Point of Sale

### **V. Budget and Finance**

(Cooper, Bingham, R. Smith, White, Young – Staff Liaison – Beverly Smith)

- A. House Bill 3365 – Higher Education Regulatory Relief Act
- B. House Bill 3584 – Cigarette Tax

*Other bills may be added. The order noted above is subject to change.*

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

## **HOUSE BILL 3254**

---

H. 3254 -- Reps. Edge, Sellers, Barfield and Kelly: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-26-87 SO AS TO PROVIDE THAT CERTAIN SPEECH-LANGUAGE PATHOLOGISTS WHO HAVE RECEIVED NATIONAL CERTIFICATION FROM THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION AND WHO ARE EMPLOYED IN A SOUTH CAROLINA PUBLIC SCHOOL DISTRICT SHALL RECEIVE A YEARLY INCENTIVE FOR THE LIFE OF THE CERTIFICATION, AND TO PROVIDE THAT THESE INCENTIVES MUST BE PAID FROM FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY FOR THIS PURPOSE IF AVAILABLE.

***Summary of Bill:***

This bill allows speech-language pathologists who have received national certification from the American Speech-Language-Hearing Association and are employed in a public school district to receive a yearly incentive for the life of the certification. These incentives must be paid from funds appropriated by the General Assembly for this purpose, if funds are available.

***Introduced:*** 1/13/2009

***Received by Ways and Means:*** 1/13/2009

***Estimated Fiscal Impact:***

The State Department of Education (SDE) estimates the total recurring cost to be \$2,835,100. SDE estimates that there are 784 Speech-language pathologists currently eligible for the incentive. This cost consists of the \$3,000 annual incentive including related fringe benefits. The Bill requires that incentives must be paid from funds appropriated by the General Assembly for this purpose.

***Subcommittee Recommendation:***

Favorable with Amendment(s)  
Amendment: replaces the word "incentive" with the word "bonus", bonus is contingent upon appropriation by the General Assembly

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

THE ABOVE CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

FISCAL IMPACT STATEMENT ON BILL NO. **H3254**

(Doc. No. 22162bb09.docx)

---

TO: The Honorable Daniel T. Cooper, Chairman, House Ways and Means Committee  
FROM: Office of State Budget, Budget and Control Board  
ANALYST: Trey Kannaday  
DATE: March 23, 2009 SBD: 2009270

---

AUTHOR: Representative Edge PRIMARY CODE CITE: 59-26-87  
SUBJECT: Speech-Language Pathologists

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:  
A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:  
\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

House Bill 3254 provides that certified speech-language pathologists employed full time in a South Carolina school district will receive an annual incentive of \$3,000. Speech-language pathologists who are considered purchased service contractors are not eligible for the incentive.

**EXPLANATION OF IMPACT:**

The State Department of Education (SDE) estimates the total recurring cost to be \$2,835,100. SDE estimates that there are 784 Speech-language pathologists currently eligible for the incentive. This cost consists of the \$3,000 annual incentive including related fringe benefits. The Bill requires that incentives must be paid from funds appropriated by the General Assembly for this purpose.

**LOCAL GOVERNMENT IMPACT:**

None.

**SPECIAL NOTES:**

None.

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

Hray/Downey  
MARCH 25, 2009

---

CLERK OF THE HOUSE

---

GENERAL GOVERNMENT, PERSONNEL, AND BENEFITS  
SUBCOMMITTEE PROPOSES THE FOLLOWING AMENDMENT  
No. TO H. 3254 (COUNCIL\NBD\11379BH09):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING ALL AFTER THE ENACTING WORDS AND  
INSERTING:**

**/SECTION 1. CHAPTER 26, TITLE 59 OF THE  
1976 CODE IS AMENDED BY ADDING:**

**“SECTION 59-26-87. (A) FOR PURPOSES OF  
THIS SECTION, ‘CERTIFIED SPEECH-LANGUAGE  
PATHOLOGIST’ MEANS A SPEECH-LANGUAGE  
PATHOLOGIST WHO HAS:**

**(1)A MASTER'S DEGREE THAT INCLUDES MEDICAL TRAINING;**

**(2)COMPLETED A ONE-YEAR CLINICAL FELLOWSHIP;**

**(3)PASSED THE PRAXIS EXAM; AND**

**(4)RECEIVED AND MAINTAINED A CERTIFICATE OF CLINICAL COMPETENCE IN SPEECH-LANGUAGE PATHOLOGY FROM THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION.**

**(B) BEGINNING WITH THE 2009-2010 SCHOOL YEAR, THE DEPARTMENT OF EDUCATION SHALL PAY A YEARLY BONUS OF THREE THOUSAND DOLLARS TO A CERTIFIED SPEECH-LANGUAGE PATHOLOGIST WHO:**

**(1)HOLDS A SOUTH CAROLINA TEACHING CERTIFICATION AS A SPEECH-LANGUAGE THERAPIST;**

**(2)IS CONTINUOUSLY EMPLOYED FULL TIME IN A SOUTH CAROLINA SCHOOL DISTRICT AS A SPEECH-LANGUAGE PATHOLOGIST AT THE TIME OF RECEIVING THE BONUS;**

**(3)IS NOT CONSIDERED A PURCHASED SERVICE CONTRACTOR; AND**

**(4)IS NOT RECEIVING A SALARY SUPPLEMENT AS A RESULT OF HOLDING A NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS CERTIFICATION.**

**(C) BONUSES PAID TO A CERTIFIED SPEECH-LANGUAGE PATHOLOGIST PURSUANT TO THIS SECTION MUST BE PAID FROM FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY SPECIFICALLY FOR THIS PURPOSE. HOWEVER, THE YEARLY BONUSES PROVIDED BY THIS SECTION MUST NOT BE PAID UNLESS NECESSARY FUNDING IN AN AMOUNT CERTIFIED ANNUALLY BY THE OFFICE OF STATE BUDGET OF THE BUDGET AND CONTROL BOARD HAS BEEN APPROPRIATED BY THE GENERAL ASSEMBLY SPECIFICALLY FOR THIS PURPOSE.**

**(D) THE COST AND EXPENSES RELATED TO THE ACQUISITION AND MAINTENANCE OF THE CERTIFICATE OF CLINICAL COMPETENCE IN SPEECH-LANGUAGE PATHOLOGY FOR THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION ARE THE RESPONSIBILITY OF THE CERTIFIED SPEECH-LANGUAGE PATHOLOGIST.**

**(E) UPON IMPLEMENTATION OF PROGRAMS AND EFFORTS COORDINATED BY THE SOUTH CAROLINA DEPARTMENT OF EDUCATION TO ATTRACT INDIVIDUALS TO POSITIONS THAT ARE DIFFICULT TO STAFF OR TO CRITICAL SUBJECT AREAS BY PROVIDING BONUSES, THE LINE-ITEM APPROPRIATION FOR THE SPEECH LANGUAGE PATHOLOGIST BONUS PROGRAM MUST BE COMBINED WITH FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY FOR OTHER TEACHER BONUSES AND MUST BE ALLOCATED FOR THAT PURPOSE BASED ON THE GUIDELINES ESTABLISHED BY THE SOUTH CAROLINA DEPARTMENT OF EDUCATION.”**

**SECTION 2. THIS ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR AND APPLIES BEGINNING WITH THE 2009-2010 SCHOOL YEAR./**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3254**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Edge, Sellers, Barfield, Kelly, G.M. Smith and Branham

Document Path: I:\council\billsggs\22162bb09.docx

Introduced in the House on January 13, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Speech-language pathologist

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/13/2009	House	Introduced and read first time HJ-103
1/13/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-104
1/15/2009	House	Member(s) request name added as sponsor: Sellers, Barfield, Kelly
1/28/2009	House	Member(s) request name added as sponsor: G.M.Smith
2/26/2009	House	Member(s) request name added as sponsor: Branham

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

1/13/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)



# **A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-26-87 SO AS TO PROVIDE THAT CERTAIN SPEECH-LANGUAGE PATHOLOGISTS WHO HAVE RECEIVED NATIONAL CERTIFICATION FROM THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION AND WHO ARE EMPLOYED IN A SOUTH CAROLINA PUBLIC SCHOOL DISTRICT SHALL RECEIVE A YEARLY INCENTIVE FOR THE LIFE OF THE CERTIFICATION, AND TO PROVIDE THAT THESE INCENTIVES MUST BE PAID FROM FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY FOR THIS PURPOSE IF AVAILABLE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 26, Title 59 of the 1976 Code is amended by adding:

"Section 59-26-87. (A) For purposes of this section, 'certified speech-language pathologist' means a speech-language pathologist who has:

- (1) a master's degree that includes medical training;
- (2) completed a one-year clinical fellowship;
- (3) passed the Praxis Exam; and
- (4) received and maintained a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association.

(B) Beginning with the 2009-2010 school year, the Department of Education shall pay a yearly incentive of three thousand dollars to a certified speech-language pathologist who:

- (1) holds a South Carolina teaching certification as a speech-language therapist;
- (2) is employed full time in a South Carolina school district as a speech-language pathologist at the time of receiving the incentive;
- (3) is not considered a purchased service contractor; and
- (4) is not receiving a salary supplement as a result of holding a National Board for Professional Teaching Standards certification.

(C) Incentives paid to a certified speech-language pathologist pursuant to this section must be paid from funds appropriated by the General Assembly for this purpose. However, the yearly incentives provided by this section must not be paid unless necessary funding in an amount certified by the Office of State Budget of the Budget and Control Board has been appropriated by the General Assembly.

(D) The cost and expenses related to the acquisition and maintenance of the Certificate of Clinical Competence in Speech-Language Pathology for the American Speech-Language-Hearing Association are the responsibility of the certified speech-language pathologist."

SECTION 2. This act takes effect upon approval by the Governor and applies beginning with the 2009-2010 school year.

----XX----

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

## **HOUSE BILL 3396**

---

H. 3396 -- Reps. Harrell, Thompson, Scott, Cooper, Erickson, Bingham, A.D. Young, Edge, J.R. Smith, G.R. Smith, Bedingfield, Whitmire, Hiott, D.C. Smith, Bannister, Brady, Cato, Chalk, Forrester, Gambrell, Hamilton, Horne, Long, Nanney, Parker, E.H. Pitts, Rice, Sottile, Stewart, Viers, White and Willis: A JOINT RESOLUTION PROPOSING AN AMENDMENT TO SECTION 36, ARTICLE III OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE GENERAL RESERVE FUND AND THE CAPITAL RESERVE FUND, SO AS TO INCREASE FROM THREE TO FIVE PERCENT THE AMOUNT OF STATE GENERAL FUND REVENUE IN THE LATEST COMPLETED FISCAL YEAR REQUIRED TO BE HELD IN THE GENERAL RESERVE FUND.

***Summary of Bill:***

This joint resolution proposes to amend the South Carolina Constitution by increasing from three to five percent the amount of state general fund revenue in the latest completed fiscal year required to be held in the General Reserve Fund.

***Introduced:*** 1/29/2009

***Received by Ways and Means:*** 1/29/2009

***Estimated Fiscal Impact:***

The State Election Commission indicates there will be no impact on the General Fund of the State or on Federal and/or Other funds. While there is a cost associated with printing a referendum ballot, the funding for statewide general elections is sufficient to cover this cost.

***Subcommittee Recommendation:***

Favorable

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

[CLICK HERE](#) to Edit Notes/Comments

FISCAL IMPACT STATEMENT ON BILL NO. **H3396**

(Doc. No. 11098htc09.docx)

---

TO: The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee  
FROM: Office of State Budget, Budget and Control Board  
ANALYSTS: Allan Kincaid  
DATE: March 23, 2009 SBD: 2009338

---

AUTHOR: Representative Harrell PRIMARY CODE CITE: Joint Resolution  
SUBJECT: General Reserve Fund - Increase to 5%

---

## ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

## ESTIMATED FISCAL IMPACT ON FEDERAL &amp; OTHER FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

House Bill 3396 a Joint Resolution proposes an amendment to Section 36, Article III of the Constitution of South Carolina, 1895, relating to the General Reserve Fund and the Capital Reserve Fund, so as to increase from three to five percent the amount of state general fund revenue in the latest completed fiscal year required to be held in the General Reserve Fund.

**EXPLANATION OF IMPACT:**

The State Election Commission indicates there will be no impact on the General Fund of the State or on Federal and/or Other funds. While there is a cost associated with printing a referendum ballot, the funding for statewide general elections is sufficient to cover this cost.

**LOCAL GOVERNMENT IMPACT:**

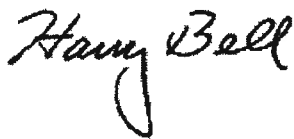
None.

**SPECIAL NOTES:**

If this requirement had been effective for Fiscal Year 2009-2010, using the actual general fund revenue for Fiscal Year 2007-08, there would be a cost to the General Fund of \$127,847,888. See table below for calculation.

Actual general fund revenue for FY 2007- 08	\$6,392,394,378
Full funding requirement at 3%	\$ 191,771,831
Full funding requirement at 5%	\$ 319,619,719
Additional funds required	\$ 127,847,888

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3396**

**STATUS INFORMATION**

Joint Resolution

Sponsors: Reps. Harrell, Thompson, Scott, Cooper, Erickson, Bingham, A.D. Young, Edge, J.R. Smith, G.R. Smith, Bedingfield, Whitmire, Hiott, D.C. Smith, Bannister, Brady, Cato, Chalk, Forrester, Gambrell, Hamilton, Horne, Long, Nanney, Parker, E.H. Pitts, Rice, Sottile, Stewart, Viers, White, Willis and Toole

Document Path: I:\council\bill\ncd\11098htc09.docx

Introduced in the House on January 29, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: General Reserve Fund

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/29/2009	House	Introduced and read first time HJ-10
1/29/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-10
2/19/2009	House	Member(s) request name added as sponsor: Toole

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

1/29/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

**A JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO SECTION 36, ARTICLE III OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE GENERAL RESERVE FUND AND THE CAPITAL RESERVE FUND, SO AS TO INCREASE FROM THREE TO FIVE PERCENT THE AMOUNT OF STATE GENERAL FUND REVENUE IN THE LATEST COMPLETED FISCAL YEAR REQUIRED TO BE HELD IN THE GENERAL RESERVE FUND.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. It is proposed that Section 36(A), Article III of the Constitution of this State be amended to read:

"(A) The General Assembly shall provide for a General Reserve Fund of ~~three~~ five percent of the general fund revenue of the latest completed fiscal year. Funds may be withdrawn from the reserve only for the purpose of covering operating deficits of state government. The General Assembly must provide for the orderly restoration of funds withdrawn from the reserve from future revenues and out of funds accumulating in excess of annual operating expenditures.

(1) The General Assembly shall provide by law for a procedure to survey the progress of the collection of revenue and the expenditure of funds and to authorize and direct reduction of appropriations as may be necessary to prevent a deficit.

(2) In the event of a year-end operating deficit, so much of the reserve fund as may be necessary must be used to cover the deficit; and the amount must be restored to the reserve fund within three fiscal years out of future revenues until the ~~three~~ five percent General Reserve Fund is again reached and maintained. Provided that a minimum of one percent of the general fund revenue of the latest completed fiscal year, if so much is necessary, must be restored to the reserve fund each year following the deficit until the ~~three~~ five percent General Reserve Fund is restored."

SECTION 2. Must Section 36, Article III of the Constitution of this State be amended so as to increase from three to five percent the amount of state general fund revenue in the latest completed fiscal year required to be held in the General Reserve Fund?

Yes ☐

No ☐

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word "Yes" and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word "No".

----XX----

This web page was last updated on February 19, 2009 at 11:42 AM

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

## **HOUSE BILL 3395**

---

H. 3395 -- Reps. Harrell, Thompson, Cooper, Erickson, Bingham, A.D. Young, Edge, Bedingfield, J.R. Smith, G.R. Smith, D.C. Smith, Bannister, Brady, Cato, Chalk, Forrester, Gambrell, Hamilton, Hiott, Horne, Long, Nanney, Parker, E.H. Pitts, Rice, Scott, Sottile, Stewart, Viers, White and Willis: A BILL TO AMEND SECTION 11-11-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE GENERAL RESERVE FUND, SO AS TO MAKE CONFORMING AMENDMENTS TO REFLECT ANY CHANGE IN THE AMOUNT REQUIRED TO BE HELD IN THE GENERAL RESERVE FUND PURSUANT TO THE CONSTITUTION OF THIS STATE AND THE RATE OF REPLENISHMENT OF THAT AMOUNT.

***Summary of Bill:***

This bill revises statutory provisions for the General Reserve Fund to conform them to any amendments to the South Carolina Constitution that change the amount required to be held in the General Reserve Fund and the rate of replenishment of that amount.

***Introduced:*** 1/29/2009

***Received by Ways and Means:*** 1/29/2009

***Estimated Fiscal Impact:***

Amending section 11-11-310 of the Code of Laws so as to add language referencing Section 36, Article III would have no direct impact on the General Fund of the State, or on Federal and/or Other funds. Section 36, Article III currently requires the General Reserve Funds to be funded at 3% of the general fund revenue of the latest completed fiscal year.

***Subcommittee Recommendation:***

Favorable

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

[CLICK HERE](#) to Edit Notes/Comments

FISCAL IMPACT STATEMENT ON BILL NO. **H3395**

(Doc. No. 9084htc09.docx)

---

TO:	The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee		
FROM:	Office of State Budget, Budget and Control Board		
ANALYSTS:	Allan Kincaid		
DATE:	March 23, 2009	SBD:	2009337

---

AUTHOR:	Representative Harrell	PRIMARY CODE CITE:	11-11-310
SUBJECT:	General Reserve Fund		

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

The proposed Bill amends Section 11-11-310, as amended, of the Code of Laws of South Carolina, 1976, relating to the General Reserve Fund, so as to make conforming amendments to reflect any change in the amount required to be held in the General Reserve Fund pursuant to the Constitution of this State and the rate of replenishment of that amount.

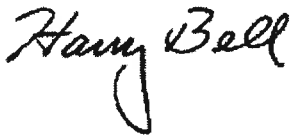
**EXPLANATION OF IMPACT:**

Amending section 11-11-310 of the Code of Laws so as to add language referencing Section 36, Article III would have no direct impact on the General Fund of the State, or on Federal and/or Other funds. Section 36, Article III currently requires the General Reserve Funds to be funded at 3% of the general fund revenue of the latest completed fiscal year.

**SPECIAL NOTES:**

House Bill 3396 proposes to amend Section 36, Article III so as to require the General Reserve Fund to be funded at 5% of the actual general fund revenue of the latest completed fiscal year.

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3395**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Harrell, Thompson, Cooper, Erickson, Bingham, A.D. Young, Edge, Bedingfield, J.R. Smith, G.R. Smith, D.C. Smith, Bannister, Brady, Cato, Chalk, Forrester, Gambrell, Hamilton, Hiott, Horne, Long, Nanney, Parker, E.H. Pitts, Rice, Scott, Sottile, Stewart, Viers, White, Willis and Toole

Document Path: l:\council\bill\bbm\9084htc09.docx

Companion/Similar bill(s): 3558

Introduced in the House on January 29, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: General Reserve Fund

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/29/2009	House	Introduced and read first time HJ-10
1/29/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-10
2/19/2009	House	Member(s) request name added as sponsor: Toole

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

1/29/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)



**A BILL**

TO AMEND SECTION 11-11-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE GENERAL RESERVE FUND, SO AS TO MAKE CONFORMING AMENDMENTS TO REFLECT ANY CHANGE IN THE AMOUNT REQUIRED TO BE HELD IN THE GENERAL RESERVE FUND PURSUANT TO THE CONSTITUTION OF THIS STATE AND THE RATE OF REPLENISHMENT OF THAT AMOUNT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 11-11-310 of the 1976 Code, as last amended by Act 385 of 1988, is further amended to read:

"Section 11-11-310. (A) The State Budget and Control Board shall provide for a General Reserve Fund. Funds accumulating in excess of the annual operating expenditures must be transferred to the General Reserve Fund and the transfer must continue to be made in succeeding fiscal years until the accumulated total in this reserve reaches an amount equal to three percent, or such other percentage as may be required pursuant to Section 36, Article III of the Constitution of this State, of the general fund revenue of the latest completed fiscal year.

(B) If there is a year-end operating deficit, so much of the General Reserve Fund as is necessary must be used to cover the deficit. The amount so applied must be restored to the General Reserve Fund out of future revenues as provided in Section 36 of Article III of the Constitution of this State and out of funds accumulating in excess of annual operating expenditures as provided in this section until the three percent maximum, or such other maximum percentage as may be required pursuant to Section 36, Article III of the Constitution of this State, is again reached and actually maintained."

SECTION 2. This act takes effect upon approval by the Governor.

---XX---

This web page was last updated on February 19, 2009 at 11:42 AM

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

## **HOUSE BILL 3415**

---

H. 3415 -- Reps. Harrell, Cato, Cooper, Duncan, Harrison, Owens, Sandifer, White, Bingham, Scott, Erickson, Herbkersman, T.R. Young, G.R. Smith, Huggins, Bedingfield, A.D. Young, Pinson, Lucas, E.H. Pitts, Crawford, Allison, Barfield, Brady, Chalk, Daning, Delleney, Edge, Frye, Hamilton, Hearn, Horne, Long, Merrill, Parker, Rice, Sellers, Simrill, Skelton, G.M. Smith, J.R. Smith, Spires, Stringer, Thompson, Toole, Viers, Willis and Wylie: A JOINT RESOLUTION TO ESTABLISH THE SOUTH CAROLINA TAXATION REALIGNMENT COMMISSION; TO PROVIDE FOR THE COMMISSION'S MEMBERSHIP, POWERS, DUTIES, AND RESPONSIBILITIES; TO PROVIDE THAT THE COMMISSION MUST CONDUCT A COMPREHENSIVE STUDY OF THE STATE'S TAX SYSTEM INCLUDING ITS SALES TAX AND EXEMPTIONS STRUCTURE AND SUBMIT A REPORT OF ITS RECOMMENDED CHANGES TO FURTHER THE GOAL OF MAINTAINING AND ENHANCING THE STATE AS AN OPTIMUM COMPETITOR IN THE EFFORT TO ATTRACT BUSINESSES AND INDIVIDUALS TO LOCATE, LIVE, WORK, AND INVEST IN THE STATE; AND TO PROVIDE FOR PROCEDURES GOVERNING THE CONSIDERATION OF LEGISLATION RESULTING FROM THE COMMISSION'S RECOMMENDATIONS.

### ***Summary of Bill:***

This joint resolution establishes the South Carolina Taxation Realignment Commission to conduct a comprehensive study of the state's tax system including its sales tax and exemptions structure and submit a report of its recommended changes to further the goal of maintaining and enhancing the state as an optimum competitor in the effort to attract businesses and individuals to locate, live, work, and invest in the state. The legislation provides for the commission's membership, powers, duties, and responsibilities. The legislation establishes procedures governing the consideration of legislation resulting from the commission's recommendations that would limit amendments proposing substantive changes to commission recommendations.

***Introduced: 2/3/2009***

***Received by Ways and Means: 2/3/2009***

***Estimated Fiscal Impact:***

The Senate and the House of Representatives  
A review of this Bill indicates there will be an additional cost for the proposed Bill. The committee will consist of 17 members with 6 legislators and 11 non-legislators. The cost per legislator per one-day meeting is \$245 per person, and the cost per non-legislator per one-day meeting is \$190. The total cost will be \$3,560 per one-day meeting. Any other expenses shall be paid from approved accounts of the Senate and House of Representatives.

***Subcommittee Recommendation:***

Favorable with Amendments:  
Amendment No. 1: deletes compensation  
Amendment No. 2: replaces 3/4 vote with 2/3 vote

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

FISCAL IMPACT STATEMENT ON BILL NO. **H.3415**

(Doc. No. 20039sd09.docx)

---

TO: The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee  
FROM: Office of State Budget, Budget and Control Board  
ANALYSTS: Beth Quick  
DATE: March 23, 2009 SBD: 2009334

---

AUTHOR: Representative Harrell PRIMARY CODE CITE: Joint Resolution  
SUBJECT: Taxation Realignment Commission

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

House Bill 3415 would establish the South Carolina Taxation Realignment Commission and provide for the commission's membership, powers, duties, and responsibilities.

**EXPLANATION OF IMPACT:**

The Senate and the House of Representatives

A review of this Bill indicates there will be an additional cost for the proposed Bill. The committee will consist of 17 members with 6 legislators and 11 non-legislators. The cost per legislator per one-day meeting is \$245 per person, and the cost per non-legislator per one-day meeting is \$190. The total cost will be \$3,560 per one-day meeting. Any other expenses shall be paid from approved accounts of the Senate and House of Representatives.

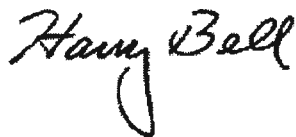
**LOCAL GOVERNMENT IMPACT:**

None.

**SPECIAL NOTES:**

None.

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

CONE/MELTON  
MARCH 25, 2009

---

CLERK OF THE HOUSE

---

REP. PROPOSES THE FOLLOWING AMENDMENT  
No. TO H. 3415  
(DOCUME~1\KIMJAC~1\LOCALS~1\TEMP\XPGRPWISE\9280HTC09):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE JOINT RESOLUTION, AS AND IF  
AMENDED, BY STRIKING SECTION 1(B)(2)  
BEGINNING ON PAGE 2 AND INSERTING:**

**/ (2) SHALL SERVE WITHOUT COMPENSATION  
AND ARE INELIGIBLE FOR THE USUAL MILEAGE,  
SUBSISTENCE, AND PER DIEM ALLOWED BY LAW  
FOR MEMBERS OF BOARDS, COMMITTEES, AND  
COMMISSIONS. OTHER EXPENSES INCURRED BY  
THE COMMISSION MUST BE PAID EQUALLY FROM**

**APPROVED ACCOUNTS OF EACH HOUSE SUBJECT TO THE APPROVAL OF THE RESPECTIVE OPERATIONS AND MANAGEMENT COMMITTEES; /**

**AMEND FURTHER, AS AND IF AMENDED, BY STRIKING SECTION 1(D) ON PAGE 4 AND INSERTING:**

**/ (D) THE TEXT OF THE AMENDING LANGUAGE REQUIRED IN SUBSECTION (C)(2) MUST BE DELIVERED TO THE CODE COMMISSIONER WHO MUST TAKE STEPS TO PREPARE THE SUBSTANCE OF THE AMENDMENT TO BE ENROLLED AND ENGROSSED IN THE CODE OF LAWS WITH THE PROVISIONS OF THE AMENDMENT TO TAKE EFFECT JANUARY 1, 2011, IF THE REPORT IS APPROVED BY ENACTMENT OF A JOINT RESOLUTION WHICH DEALS EXCLUSIVELY WITH THE SINGLE SUBJECT AND QUESTION OF APPROVAL OF THE REPORT AND THE ASSOCIATED AMENDMENT, IN ITS ENTIRETY. THE LEGISLATION CONTAINING THE AMENDMENT TO**

**ENACT THE RECOMMENDATIONS OF THE REPORT MADE BY THE COMMISSION MUST BE INTRODUCED IN BOTH HOUSES BY CHAIRMAN OF THE SENATE FINANCE COMMITTEE AND THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE. AN AMENDMENT IS GERMANE TO LEGISLATION RECOMMENDED BY THE COMMISSION ONLY IF THE AMENDMENT SEEKS TO MAKE A TECHNICAL CHANGE NECESSARY TO EFFECTUATE THE PURPOSE OF THE PARTICULAR PROVISION TO BE AMENDED. AN AMENDMENT THAT SEEKS TO ADD, DELETE, OR SUBSTANTIVELY CHANGE A RECOMMENDATION OR OTHER PROVISION AFFECTING STATE REVENUE INCLUDED IN ANY LEGISLATION RECOMMENDED BY THE COMMISSION MAY ONLY BE ADOPTED OR CONCURRED IN BY A TWO-THIRDS MAJORITY VOTE OF THOSE PRESENT AND VOTING IN EACH RESPECTIVE HOUSE. /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

---

## **HOUSE BILL 3721**

---

---

H. 3721 -- Rep. Kirsh: A BILL TO AMEND SECTION 12-6-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO THE YEAR 2008; TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO INTERNAL REVENUE CODE SECTIONS NOT ADOPTED BY STATE LAW, SO AS TO MAKE ADDITIONS; AND TO PROVIDE THAT A TAXPAYER WHO FOLLOWS SECTION 3094 OF THE FEDERAL HOUSING ECONOMIC RECOVERY ACT OF 2008, FOR SOUTH CAROLINA PURPOSES MUST NOT BE PENALIZED.

***Summary of Bill:***

This bill conforms the South Carolina tax statutes to the Internal Revenue Code through December 31, 2008. This is the annual adoption of conformity that the General Assembly has passed since conforming to the Internal Revenue Code.

***Introduced:*** 3/24/2009

***Received by Ways and Means:*** 3/24/2009

***Estimated Fiscal Impact:***

Pending

***Subcommittee Recommendation:***

Favorable

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

[CLICK HERE](#) to Edit Notes/Comments



**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3721**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Kirsh

Document Path: I:\council\bills\agm\19338mm09.docx

Companion/Similar bill(s): 3383

Introduced in the House on March 24, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Not yet available

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
-----		
3/24/2009	House	Introduced and read first time
3/24/2009	House	Referred to Committee on <b>Ways and Means</b>

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

3/24/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

**A BILL**

TO AMEND SECTION 12-6-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO THE YEAR 2008; TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO INTERNAL REVENUE CODE SECTIONS NOT ADOPTED BY STATE LAW, SO AS TO MAKE ADDITIONS; AND TO PROVIDE THAT A TAXPAYER WHO FOLLOWS SECTION 3094 OF THE FEDERAL HOUSING ECONOMIC RECOVERY ACT OF 2008, FOR SOUTH CAROLINA PURPOSES MUST NOT BE PENALIZED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12-6-40(A)(1)(a) of the 1976 Code, as last amended by Act 311 of 2008, is further amended to read:

"(a) Except as otherwise provided, 'Internal Revenue Code' means the Internal Revenue Code of 1986, as amended through December 31, ~~2007~~ 2008, and includes the effective date provisions contained in it."

SECTION 2. Section 12-6-50 of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"Section 12-6-50. For purposes of this title and all other titles ~~which~~ that provide for taxes administered by the department, except as otherwise specifically provided, the following Internal Revenue Code Sections are specifically not adopted by this State:

- (1) Sections 1(a) through 1(e), 3, 11, and 1201 relating to federal tax rates;
- (2) Sections 22 through 54, 515, 853, 901 through 908, and 960 relating to tax credits;
- (3) Sections 55 through 59 relating to minimum taxes;
- (4) Sections 78, 86, 87, 168(k), 168(l), 168(m), 168(n), 196, and 280C relating to dividends received from certain foreign corporations by domestic corporations, taxation of social security and certain railroad retirement benefits, the alcohol fuel credit, bonus depreciation, deductions for certain unused business credits, and certain expenses for which credits are allowable;
- (5) Sections 72(m)(5)(B), 72(f), 72(o), 72(q), and 72(t), relating to penalty taxes on certain retirement plan distributions;
- (6) Section 172(b)(1) relating to net operating loss carrybacks;
- (7) Section 199 relating to the deduction attributable to domestic production activities;
- (8) Sections 531 through 564 relating to certain special taxes on corporations;
- (9) Sections 581, 582, and 585 through 596 relating to the taxation of banking institutions;
- (10) Sections 665 through 668 relating to taxation of certain accumulation distributions from trusts;
- (11) Sections 801 through 845 relating to taxation of insurance companies;
- (12) Sections 861 through 908, 912, 931 through 940, and 944 through 989 relating to the taxation of foreign income;
- (13) Sections 1352 through 1359 relating to an alternative tax on qualifying shipping activities;

(14) Sections ~~1401~~ 1400 through 1494;

(15) Sections 1501 through 1505 relating to consolidated tax returns; and

(16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12-6-3910 and Section 12-54-55."

SECTION 3. For purposes of Section 12-6-3910, as last amended by Act 363 of 2002, a taxpayer must not be penalized for following the provisions of section 3094 of the federal Housing Economic Recovery Act of 2008 (PL 110-289) for South Carolina purposes.

SECTION 4. This act takes effect upon approval by the Governor.

---XX---

This web page was last updated on March 24, 2009 at 4:31 PM

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

## **HOUSE BILL 3722**

---

H. 3722 -- Reps. Kirsh and White: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-1145 SO AS TO PROVIDE FOR DETERMINATION OF TREATMENT OF GAINS AND LOSSES APPORTIONED TO THIS STATE BY THE INTERNAL REVENUE CODE STANDARDS; BY ADDING SECTION 12-36-2575 SO AS TO PROVIDE FOR FILING OF A RETURN FOR EACH SALES OR USE TAX LIABILITY PERIOD EVEN IF NO TAX LIABILITY ACCRUES FOR THAT PERIOD; TO AMEND SECTION 12-4-320, AS AMENDED, RELATING TO POWERS AND DUTIES OF THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE FOR ADOPTION OF FEDERAL RELIEF FOR CERTAIN ADVERSELY AFFECTED TAXPAYERS; TO AMEND SECTION 12-6-590, AS AMENDED, RELATING TO TREATMENT OF "S" CORPORATIONS FOR TAX PURPOSES, SO AS TO INCLUDE ADDITIONAL REFERENCES TO THE INTERNAL REVENUE CODE FOR SIMILAR STATE TREATMENT; TO AMEND SECTION 12-6-2250, AS AMENDED, RELATING TO THE APPORTIONMENT OF INCOME DERIVED BY A TAXPAYER TO THE TAXPAYER'S CONDUCT OF BUSINESS IN THIS STATE, SO AS TO CHANGE THE WORD "ALLOCATED" TO "APPORTIONED"; TO AMEND SECTION 12-6-2295, RELATING TO INCLUSIONS AND EXCLUSIONS IN CONNECTION WITH THE TERMS "SALES" AND "GROSS RECEIPTS" AS USED IN THE APPORTIONMENT OF INCOME TO THIS STATE FOR STATE INCOME TAX PURPOSES, SO AS TO FURTHER SPECIFY RENTAL AND SALES INCOME FROM TANGIBLE AND INTANGIBLE, REAL AND PERSONAL PROPERTY IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT AGAINST THE STATE INCOME TAX, SO AS TO DELETE A REFERENCE TO GENERAL CONTRACTORS IN CONNECTION WITH THE TERM "CORPORATE OFFICE"; TO AMEND SECTION 12-6-3376, RELATING TO A CREDIT AGAINST THE STATE INCOME TAX FOR THE PURCHASE OR LEASE OF A PLUG-IN HYBRID VEHICLE, SO AS TO REQUIRE THAT THE CREDIT BE THE FIRST CLAIMED FOR THAT VEHICLE, TO PROVIDE FOR REGULATIONS PROMULGATED BY THE STATE ENERGY OFFICE, TO FURTHER PROVIDE FOR CLAIMING THE CAPPED CREDIT, AND TO PROVIDE FOR THE EFFECT OF A REPEAL OF THE CAPS ON THE CREDIT; TO AMEND SECTION 12-6-3377, RELATING TO THE ALTERNATIVE MOTOR VEHICLE FUEL CREDIT AGAINST THE STATE INCOME TAX, SO AS TO FURTHER PROVIDE FOR THE CALCULATION OF THE CREDIT FOR BUSINESS USE AND TO DELETE A PROVISION DEEMING THE FEDERAL TAX TREATMENT OF THE ALTERNATIVE FUEL CREDIT TO BE PERMANENT; TO AMEND SECTION 12-6-3535, AS AMENDED, RELATING TO A CREDIT AGAINST THE STATE INCOME TAX FOR REHABILITATION OF A HISTORIC STRUCTURE, SO AS TO INCLUDE A CREDIT AGAINST THE CORPORATE LICENSE FEES; TO AMEND SECTION 12-6-3550, AS AMENDED, RELATING TO THE VOLUNTARY CLEANUP INCOME TAX CREDIT, SO AS TO CLARIFY THAT THE CREDIT IS ONE AGAINST THE STATE INCOME TAX; TO AMEND SECTION 12-6-3585, AS AMENDED, RELATING TO THE INDUSTRY PARTNERSHIP FUND CREDIT AGAINST STATE TAXES, SO AS TO ALLOW THE CREDIT TO BE USED AGAINST THE TAXPAYER'S APPLICABLE STATE INCOME TAX, BANK TAX, INSURANCE PREMIUM TAX, OR LICENSE

THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

FEE LIABILITY; TO AMEND SECTION 12-6-3610, AS AMENDED, RELATING TO INCOME TAX CREDIT FOR PROPERTY USED FOR DISTRIBUTION OR DISPENSING OF RENEWABLE FUEL, SO AS TO DELETE CERTAIN TRANSITIONAL PROVISIONS; TO AMEND SECTION 12-6-3630, RELATING TO A CREDIT AGAINST CERTAIN STATE TAXES FOR A CONTRIBUTION TO THE SOUTH CAROLINA HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND, SO AS TO FURTHER PROVIDE FOR CLAIMING THE CREDIT; TO AMEND SECTION 12-8-1530, RELATING TO QUARTERLY RETURNS OF WITHHELD TAX, SO AS TO REQUIRE RETURNS EVEN IN PERIODS WHEN NO TAX HAS BEEN WITHHELD; TO AMEND SECTION 12-8-1550, RELATING TO STATEMENTS REQUIRED TO BE FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE FOR PRESCRIPTION BY THE DEPARTMENT OF EITHER ELECTRONIC OR MAGNETIC MEDIA METHOD FOR SUBMISSION OF CERTAIN INFORMATION; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO THE JOB DEVELOPMENT TAX CREDIT, SO AS TO MAKE TECHNICAL CORRECTIONS AND ADD A CROSS REFERENCE; TO AMEND SECTION 12-20-100, RELATING TO LICENSE TAX ON UTILITIES AND ELECTRIC COOPERATIVES, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 12-21-2575, RELATING TO METHODS OF ACCOUNTING FOR ADMISSIONS OTHER THAN TICKETS, SO AS TO PROVIDE THAT THE TICKETS BE COLLECTED AND RETAINED TO ACCOUNT FOR ADMISSIONS; TO AMEND SECTION 12-36-910, AS AMENDED, RELATING TO THE FIVE PERCENT SALES TAX ON THE PROCEEDS OF THE SALE OF TANGIBLE PERSONAL PROPERTY, SO AS TO DELETE A REDUNDANCY AS TO THE TAX ON PROCEEDS FROM THE SALE OF A WARRANTY, MAINTENANCE, OR SIMILAR CONTRACT FOR TANGIBLE PERSONAL PROPERTY; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE'S SALES TAX, SO AS TO SPECIFY NOTIFICATION REQUIREMENTS FOR CLAIMING THE EXEMPTION ON THE CONSTRUCTION MATERIALS USED IN CERTAIN SINGLE MANUFACTURING AND DISTRIBUTION FACILITIES AND TO PROVIDE FOR ASSESSMENT OF ANY TAX DUE, TO SPECIFY THAT THE EXEMPTION IN CONNECTION WITH THE SALE OF CURRENCY APPLIES TO CURRENCY THAT IS LEGAL TENDER, AND TO CLARIFY THE EXEMPTION AS TO DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES; TO AMEND SECTION 12-37-90, RELATING TO DUTIES OF A FULL-TIME COUNTY ASSESSOR, SO AS TO DELETE THE AUTHORITY OF THE DEPARTMENT OF REVENUE TO ALTER A VALUE OF REAL PROPERTY AS SET BY THE ASSESSOR; TO AMEND SECTION 12-37-220, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO PROVIDE FOR EXEMPTION OF THE REAL PROPERTY OF DEFINED TAX EXEMPT ORGANIZATIONS AND TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-44-30, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO CORRECT A CROSS REFERENCE IN THE DEFINITION OF "SPONSOR"; TO AMEND SECTION 12-54-70, AS AMENDED, RELATING TO EXTENSION OF TIME FOR FILING RETURNS OR PAYING TAX, SO AS TO FURTHER DEFINE THE LENGTH OF THE EXTENSION; TO AMEND SECTION 12-54-85, AS AMENDED, RELATING TO TIME LIMITATION FOR ASSESSMENT OF TAXES OR FEES BY THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE FOR THE INSTANCE OF A TAXPAYER LACKING A VALID BUSINESS PURPOSE; TO AMEND SECTION 12-54-240, AS AMENDED, RELATING TO DISCLOSURE OF RECORDS AND REPORTS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO REQUIRE THAT THE DISCLOSURE MUST BE WILFUL TO GIVE RISE TO THE PENALTIES; TO AMEND SECTION 12-63-20, AS AMENDED, RELATING TO THE ENERGY FREEDOM AND RURAL DEVELOPMENT ACT, SO AS TO DEFINE "BIODIESEL" FOR THAT PURPOSE; TO AMEND SECTION 30-2-320, RELATING TO DISCLOSURE OF IDENTIFYING INFORMATION IN CONNECTION WITH PUBLIC RECORDS, AND SECTION 37-20-180, RELATING TO DISCLOSURE OF IDENTIFYING INFORMATION IN CONNECTION WITH PUBLICATION OF A SOCIAL SECURITY NUMBER, BOTH SO AS TO ALLOW DISCLOSURE BY AND TO THE DEPARTMENT OF REVENUE FOR THE PURPOSE OF CARRYING OUT ITS DUTIES AND RESPONSIBILITIES; TO AMEND SECTION 44-43-1360, AS AMENDED, RELATING TO ADMINISTRATION OF DONATE LIFE SOUTH CAROLINA, SO AS TO CORRECT A CROSS REFERENCE; AND TO REPEAL SECTION 12-20-175, RELATING TO REDUCTION OF LICENSE FEES DUE TO TAX CREDITS AND SECTION 12-36-30, RELATING TO THE DEFINITION OF "PERSON" FOR PURPOSES OF THE SALES AND USE TAX.

***Summary of Bill:***

Please see separate attachment.

***Introduced:*** 3/24/2009

***Received by Ways and Means:*** 3/24/2009

***Estimated Fiscal Impact:***

Pending

***Subcommittee Recommendation:***

Pending

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

[CLICK HERE](#) to Edit Notes/Comments

## Explanation of Annual Tax Bill 2009

Section 1. Clarifies treatment of capital gains to mirror federal treatment for income tax purposes.

Section 2. Clarifies that a person with a retail license must file sales tax returns with the department even if there are no sales.

Section 3. Allows the department to extend relief for filing to civilians serving within a combat zone and automatically adopts federal extended due dates for disaster situations.

Section 4. Adds back federal code section related to built in gains that were inadvertently deleted in prior legislation. (Passed in 2008)

Section 5. Technical correction to change allocated to apportion in relation to corporate income tax provisions. (Passed in 2008)

Section 6. Clarifies that section applies to tangible personal property and not to intangible property. Removes incorrect language and clarifies that accounts receivable are apportioned on net gains to prevent double taxation and adds loans in the apportionment factor if in the normal course of business.

Section 7. Deletes unnecessary language from jobs tax credit provision. (Passed in 2008)

Section 8. To clarify issues involving the electric plug in vehicle credit and to make the current caps on the credit administrable. (Passed in 2008)

Section 9. Clarifies that any limitations imposed by any federal provisions do not affect the South Carolina credit amount for the qualified fuel cell motor vehicle credit. (Passed in 2008)

Section 10. Clarifies historic rehabilitation credit can be used against corporate license fees. (Passed in 2008)

Section 11. Clarifies that the Brownsfields Credit applies to income taxes imposed under Title 12.

Section 12. Clarification to make consistent provisions for the Industry Partnership Credit related to claiming the credit against bank taxes. (Passed in 2008)

Section 13. Removes unnecessary eighteenth month period from statute concerning the credit for dispensing renewable fuels.

Section 14. Clarifies the hydrogen fund contribution credit by eliminating the requirement that a certification form must be attached to the tax return and clarifies in what year the credit may be claimed. (Passed in 2008)

Section 15. Clarifies that a withholding return must be filed in any quarter that the withholding account is open with the department.

Section 16. Clarifies that the department can continue collecting withholding information using magnetic media.

Section 17. Corrects a cross reference and clarifies that averaging requirements provided elsewhere do not apply.

Section 18. Clarifies provision related to corporate license fees since the department does not determine all values for property tax purposes. (Passed in 2008)

Section 19. Clarifies that alternative methods of accounting for paid admissions for admissions tax purposes take the place of collecting and retaining tickets.

Section 20. Deletes unnecessary duplicative language in statute related to warranty contracts. (Passed in 2008)

Section 21. Adds a provision to require a taxpayer to provide a notice to the department of the specific start date for the investment period for purposes of the construction material exemption. (Passed in 2008)

Section 21C. Clarifies the exemption by exempting past currency as with coins. (Passed in 2008)

Section 21D. Amends the sales tax exemption for durable medical equipment by deleting an unconstitutional provision related to retailers located in South Carolina. (Passed in 2008)

Section 22. Deletes reference to the department as an entity that can alter real property values set by the assessor.

Section 23. Clarifies the property tax exemption for property held by an exempt organization for future use or investment.

Section 24. Corrects a cross reference.

Section 25. Corrects cross reference.

Section 26. Clarifies that a South Carolina extension of time is allowed for the same period of time as for federal purposes. (Passed in 2008)



Section 27. Corrects grammatical wording in statute related to the assessment of taxes. (Passed in 2008)

Section 28. Clarifies that an employee is subject to penalties only for willful disclosure of confidential information. (Passed in 2008)

Section 29. Makes consistent definition of biodiesel for purposes of the incentive payment and motor fuel taxes. (Passed in 2008)

Section 30. Corrects an inadvertent disruption in department collection activities due to state guidelines on confidentiality.

Section 31. Corrects cross reference.

Section 32. Repeals an outdated unnecessary section related to corporate license fees.

Section 33. Deletes section related to definition of person to make consistent definition in other parts of Title 12.

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3722**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Kirsh and White

Document Path: I:\council\bills\agm\19356mm09.docx

Introduced in the House on March 24, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Not yet available

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
3/24/2009	House	Introduced and read first time HJ-11
3/24/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-14

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

3/24/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

**A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-1145 SO AS TO PROVIDE FOR DETERMINATION OF TREATMENT OF GAINS AND LOSSES APPORTIONED TO THIS STATE BY THE INTERNAL REVENUE CODE STANDARDS; BY ADDING SECTION 12-36-2575 SO AS TO PROVIDE FOR FILING OF A RETURN FOR EACH SALES OR USE TAX LIABILITY PERIOD EVEN IF NO TAX LIABILITY ACCRUES FOR THAT PERIOD; TO AMEND SECTION 12-4-320, AS AMENDED, RELATING TO POWERS AND DUTIES OF THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE FOR ADOPTION OF FEDERAL RELIEF FOR CERTAIN ADVERSELY AFFECTED TAXPAYERS; TO AMEND SECTION 12-6-590, AS AMENDED, RELATING TO TREATMENT OF "S" CORPORATIONS FOR TAX PURPOSES, SO AS TO INCLUDE ADDITIONAL REFERENCES TO THE INTERNAL REVENUE CODE FOR SIMILAR STATE TREATMENT; TO AMEND SECTION 12-6-2250, AS AMENDED, RELATING TO THE APPORTIONMENT OF INCOME DERIVED BY A TAXPAYER TO THE TAXPAYER'S CONDUCT OF BUSINESS IN THIS STATE, SO AS TO CHANGE THE WORD "ALLOCATED" TO "APPORTIONED"; TO AMEND SECTION 12-6-2295, RELATING TO INCLUSIONS AND EXCLUSIONS IN CONNECTION WITH THE TERMS "SALES" AND "GROSS RECEIPTS" AS USED IN THE APPORTIONMENT OF INCOME TO THIS STATE FOR STATE INCOME TAX PURPOSES, SO AS TO FURTHER SPECIFY RENTAL AND SALES INCOME FROM TANGIBLE AND INTANGIBLE, REAL AND PERSONAL PROPERTY IN THE ORDINARY COURSE OF THE TAXPAYER'S TRADE OR BUSINESS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT AGAINST THE STATE INCOME TAX, SO AS TO DELETE A REFERENCE TO GENERAL CONTRACTORS IN CONNECTION WITH THE TERM "CORPORATE OFFICE"; TO AMEND SECTION 12-6-3376, RELATING TO A CREDIT AGAINST THE STATE INCOME TAX FOR THE PURCHASE OR LEASE OF A PLUG-IN HYBRID VEHICLE, SO AS TO REQUIRE THAT THE CREDIT BE THE FIRST CLAIMED FOR THAT VEHICLE, TO PROVIDE FOR REGULATIONS PROMULGATED BY THE STATE ENERGY OFFICE, TO FURTHER PROVIDE FOR CLAIMING THE CAPPED CREDIT, AND TO PROVIDE FOR THE EFFECT OF A REPEAL OF THE CAPS ON THE CREDIT; TO AMEND SECTION 12-6-3377, RELATING TO THE ALTERNATIVE MOTOR VEHICLE FUEL CREDIT AGAINST THE STATE INCOME TAX, SO AS TO FURTHER PROVIDE FOR THE CALCULATION OF THE CREDIT FOR BUSINESS USE AND TO DELETE A PROVISION DEEMING THE FEDERAL TAX TREATMENT OF THE ALTERNATIVE FUEL CREDIT TO BE PERMANENT; TO AMEND SECTION 12-6-3535, AS AMENDED, RELATING TO A CREDIT AGAINST THE STATE INCOME TAX FOR REHABILITATION OF A HISTORIC STRUCTURE, SO AS TO INCLUDE A CREDIT AGAINST THE CORPORATE LICENSE FEES; TO AMEND SECTION 12-6-3550, AS AMENDED, RELATING TO THE VOLUNTARY CLEANUP INCOME TAX CREDIT, SO AS TO CLARIFY THAT THE CREDIT IS ONE AGAINST THE STATE INCOME TAX; TO AMEND SECTION 12-6-3585, AS AMENDED, RELATING TO THE INDUSTRY PARTNERSHIP FUND CREDIT AGAINST STATE TAXES, SO AS TO ALLOW THE CREDIT TO BE USED AGAINST THE TAXPAYER'S APPLICABLE STATE INCOME TAX, BANK TAX, INSURANCE PREMIUM TAX, OR LICENSE FEE LIABILITY; TO AMEND SECTION 12-6-3610, AS AMENDED, RELATING TO INCOME TAX CREDIT FOR PROPERTY USED FOR DISTRIBUTION OR DISPENSING OF RENEWABLE FUEL, SO AS TO DELETE CERTAIN TRANSITIONAL PROVISIONS; TO AMEND SECTION 12-6-3630, RELATING TO A CREDIT AGAINST CERTAIN STATE TAXES FOR A CONTRIBUTION TO THE SOUTH CAROLINA HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND, SO AS TO FURTHER PROVIDE FOR CLAIMING THE CREDIT; TO AMEND SECTION 12-8-1530, RELATING TO QUARTERLY RETURNS OF WITHHELD TAX, SO AS TO REQUIRE RETURNS EVEN IN PERIODS WHEN NO TAX HAS BEEN WITHHELD; TO AMEND SECTION 12-8-1550, RELATING TO STATEMENTS REQUIRED TO BE FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE FOR PRESCRIPTION BY THE DEPARTMENT OF EITHER ELECTRONIC OR MAGNETIC MEDIA METHOD FOR SUBMISSION OF CERTAIN INFORMATION; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO THE JOB DEVELOPMENT TAX CREDIT, SO AS TO MAKE TECHNICAL CORRECTIONS AND ADD A CROSS REFERENCE; TO AMEND SECTION 12-20-100, RELATING TO LICENSE TAX ON UTILITIES AND ELECTRIC COOPERATIVES, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 12-21-2575, RELATING TO METHODS OF ACCOUNTING FOR ADMISSIONS OTHER THAN TICKETS, SO AS TO PROVIDE THAT THE TICKETS BE COLLECTED AND RETAINED TO ACCOUNT FOR ADMISSIONS; TO AMEND SECTION 12-36-910, AS AMENDED, RELATING TO THE FIVE PERCENT SALES TAX ON THE PROCEEDS OF THE SALE OF TANGIBLE PERSONAL PROPERTY, SO AS TO DELETE A REDUNDANCY AS

TO THE TAX ON PROCEEDS FROM THE SALE OF A WARRANTY, MAINTENANCE, OR SIMILAR CONTRACT FOR TANGIBLE PERSONAL PROPERTY; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE'S SALES TAX, SO AS TO SPECIFY NOTIFICATION REQUIREMENTS FOR CLAIMING THE EXEMPTION ON THE CONSTRUCTION MATERIALS USED IN CERTAIN SINGLE MANUFACTURING AND DISTRIBUTION FACILITIES AND TO PROVIDE FOR ASSESSMENT OF ANY TAX DUE, TO SPECIFY THAT THE EXEMPTION IN CONNECTION WITH THE SALE OF CURRENCY APPLIES TO CURRENCY THAT IS LEGAL TENDER, AND TO CLARIFY THE EXEMPTION AS TO DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES; TO AMEND SECTION 12-37-90, RELATING TO DUTIES OF A FULL-TIME COUNTY ASSESSOR, SO AS TO DELETE THE AUTHORITY OF THE DEPARTMENT OF REVENUE TO ALTER A VALUE OF REAL PROPERTY AS SET BY THE ASSESSOR; TO AMEND SECTION 12-37-220, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO PROVIDE FOR EXEMPTION OF THE REAL PROPERTY OF DEFINED TAX EXEMPT ORGANIZATIONS AND TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-44-30, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO CORRECT A CROSS REFERENCE IN THE DEFINITION OF "SPONSOR"; TO AMEND SECTION 12-54-70, AS AMENDED, RELATING TO EXTENSION OF TIME FOR FILING RETURNS OR PAYING TAX, SO AS TO FURTHER DEFINE THE LENGTH OF THE EXTENSION; TO AMEND SECTION 12-54-85, AS AMENDED, RELATING TO TIME LIMITATION FOR ASSESSMENT OF TAXES OR FEES BY THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE FOR THE INSTANCE OF A TAXPAYER LACKING A VALID BUSINESS PURPOSE; TO AMEND SECTION 12-54-240, AS AMENDED, RELATING TO DISCLOSURE OF RECORDS AND REPORTS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO REQUIRE THAT THE DISCLOSURE MUST BE WILFUL TO GIVE RISE TO THE PENALTIES; TO AMEND SECTION 12-63-20, AS AMENDED, RELATING TO THE ENERGY FREEDOM AND RURAL DEVELOPMENT ACT, SO AS TO DEFINE "BIODIESEL" FOR THAT PURPOSE; TO AMEND SECTION 30-2-320, RELATING TO DISCLOSURE OF IDENTIFYING INFORMATION IN CONNECTION WITH PUBLIC RECORDS, AND SECTION 37-20-180, RELATING TO DISCLOSURE OF IDENTIFYING INFORMATION IN CONNECTION WITH PUBLICATION OF A SOCIAL SECURITY NUMBER, BOTH SO AS TO ALLOW DISCLOSURE BY AND TO THE DEPARTMENT OF REVENUE FOR THE PURPOSE OF CARRYING OUT ITS DUTIES AND RESPONSIBILITIES; TO AMEND SECTION 44-43-1360, AS AMENDED, RELATING TO ADMINISTRATION OF DONATE LIFE SOUTH CAROLINA, SO AS TO CORRECT A CROSS REFERENCE; AND TO REPEAL SECTION 12-20-175, RELATING TO REDUCTION OF LICENSE FEES DUE TO TAX CREDITS AND SECTION 12-36-30, RELATING TO THE DEFINITION OF "PERSON" FOR PURPOSES OF THE SALES AND USE TAX.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1.A. Article 9, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-1145. The determination of whether gains and losses are treated as ordinary or capital under Internal Revenue Code Section 1231 for federal income tax purposes will determine whether the Section 1231 gains and losses allocated or apportioned to South Carolina will be treated as long term capital gains and losses, or ordinary gains and losses."

B. This section takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2008.

SECTION 2. Article 25, Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Section 12-36-2575. (A) A person who has been issued a retail license pursuant to Section 12-36-510 shall file a return for each filing period as required pursuant to this article even if the person does not have a sales or use tax liability or use tax remittance responsibility for a filing period. For a filing period in which the person does not have a sales or use tax liability or use tax remittance responsibility, the return still must be completed in its entirety as required in Section 12-36-2570(B).

(B) A person liable for the use tax pursuant to Section 12-36-1330(A) who has obtained a Purchaser's Certificate of

Registration from the department must file a return for each filing period as required pursuant to this article even if the person does not have a use tax liability for a filing period. For a filing period in which the person does not have a use tax liability, the return still must be completed in its entirety as required in Section 12-36-2570(B)."

SECTION 3. Section 12-4-320(6) of the 1976 Code is amended to read:

"(6) for damage caused by war, terrorist act, or natural disaster or service ~~with the United States armed forces or national guard~~ in or near a hazard duty zone, extend the date for filing returns, payments of taxes, collection of taxes, and conducting audits, and waive interest and penalties. The department, in its discretion, automatically may adopt federal special filing and tax payment relief provisions allowed for adversely affected taxpayers."

SECTION 4.A. Section 12-6-590 of the 1976 Code, as last amended by Act 116 of 2007, is further amended by adding at the end:

"(C) If Internal Revenue Code Section 1374 (Tax Imposed on Certain Built-In Gains and Capital Gains) or 1375 (Tax Imposed on Certain Passive Investment Income) imposes a federal income tax, a South Carolina tax is similarly imposed using the rates set forth in Section 12-6-530. If the exception in Internal Revenue Code Section 1374(c) is effective for federal tax purposes, then this exception is applicable for South Carolina income tax purposes."

B. This section takes effect upon approval by the Governor and applies to tax years after 2006.

SECTION 5.A. Section 12-6-2250(B) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(B) For taxable years beginning in 2007 through 2010 only, a taxpayer in subsection (A) shall apportion income by using the method provided in Section 12-6-2250(A) and, if applicable, the method provided in Section 12-6-2252. If the calculation permitted in Section 12-6-2252 results in a reduction in income ~~allocated~~ apportioned to this State, the reduction is allowed as follows:

Taxable year beginning in:	Percentage of reduction allowed:
2007	20
2008	40
2009	60
2010	80:"

B. This section takes effect upon approval by the Governor and applies for tax years beginning after 2006.

SECTION 6.A. Section 12-6-2295(A) of the 1976 Code, as added by Act 116 of 2007, is amended to read:

"(A) The terms 'sales' as used in Section 12-6-2280 and 'gross receipts' as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:

(1) receipts from the sale or rental of tangible real or personal property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business including inventory;

(2) ~~receipts from the sale of accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business if the accounts receivable were created by the taxpayer or a related party. For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the~~

~~Internal Revenue Code;~~

~~(3)~~ receipts from the use of intangible property ~~in this State~~ including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;

~~(4)(3)~~ net gain from the sale of tangible personal property or intangible property used in the trade or business unless otherwise provided in item (1) or (4): For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:

~~(a)~~ not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or

~~(b)~~ held by the business primarily for sale to customers in the ordinary course of the trade or business;

~~(4)~~ net gains from the sale of accounts receivable, loans, or other intangible property held for sale in the ordinary course of the taxpayer's trade or business;

~~(5)~~ receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State;

~~(6)~~ receipts from the sale of intangible property which are unable to be attributed to any particular state or states are excluded from the numerator and denominator of the factor."

B. This section takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2008.

SECTION 7.A. Section 12-6-3360(A) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(A) Taxpayers that operate manufacturing, tourism, processing, warehousing, distribution, research and development, corporate office, qualifying service-related facilities, extraordinary retail establishment, qualifying technology intensive facilities, and banks as defined pursuant to this title are allowed an annual jobs tax credit as provided in this section. In addition, taxpayers that operate retail facilities and service-related industries qualify for an annual jobs tax credit in counties designated as least developed or distressed, and in counties that are under developed and not traversed by an interstate highway. ~~As used in this section, 'corporate office' includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation.~~ Credits pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11 of this title, and insurance premium taxes imposed pursuant to Chapter 7 of Title 38, and are limited in use to fifty percent of the taxpayer's South Carolina income tax, bank tax, or insurance premium tax liability. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowable pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20."

B. This section takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2005.

SECTION 8.A. Section 12-6-3376 of the 1976 Code, as added by Act 83 of 2007, is amended to read:

"Section 12-6-3376. (A) For taxable years beginning after 2007, and before 2011, a taxpayer is allowed a tax credit against the income tax imposed pursuant to this chapter for the in-state purchase or lease of a plug-in hybrid vehicle. The purchase or lease must be the first purchase or lease of the vehicle to qualify for the credit allowed by this section.

(B) A plug-in hybrid vehicle is a vehicle that shares the same benefits as an internal combustion and electric engine with an all-electric range of no less than nine miles. The credit is equal to two thousand dollars. The credit allowed by this section is nonrefundable and if the amount of the credit exceeds the taxpayer's liability for the applicable taxable year, any unused credit may be carried forward for five years.

(C) The State Energy Office may promulgate regulations addressing qualifying vehicles, qualifying leases of those vehicles, and the application process for claiming credits pursuant to this section.

~~(B)(D)~~ Notwithstanding the credit amount allowed pursuant to this section, for a ~~fiscal~~ calendar year all claims made pursuant to this section must not exceed two hundred thousand dollars and must apply proportionately to all eligible claimants. To obtain the amount of capped credit available to a taxpayer, each taxpayer must submit a request for credit to the State Energy Office on a form prescribed by the State Energy Office. The form must be submitted by January thirty-first for vehicles purchased in the previous calendar year and the State Energy Office must notify the taxpayer of the amount of credit allocated to that taxpayer by March first of that year. A taxpayer may claim the capped credit for its taxable year which contains the December thirty-first of the previous calendar year. The department may require a copy of the form issued by the State Energy Office be attached to the return or otherwise provided.

B. For the state's fiscal year beginning July 1, 2008, the capped credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications must be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year that contains December 31, 2009.

C. To the extent the caps on the credit contained in this section are repealed in legislation enacted before or after this section, the elimination of those caps must be seen as the last expression of the legislature and to the extent any language in this section conflicts with that repeal, it must be considered null and void.

SECTION 9. Section 12-6-3377 of the 1976 Code, as added by Act 312 of 2006, is amended to read:

"Section 12-6-3377. (A) A South Carolina resident taxpayer who is eligible for ~~and claims~~ the new qualified fuel cell motor vehicle credit, the new advanced lean burn technology motor vehicle credit, the new qualified hybrid motor vehicle credit based on the combined city/highway metric or standard set by federal Internal Revenue Code Section 30B, and the new qualified alternative fuel motor vehicle credit allowed pursuant to Internal Revenue Code Section 30B is allowed a credit against the income taxes imposed pursuant to this chapter in an amount equal to twenty percent of ~~that the federal income tax credit, without consideration of limitations on the amount of the federal credit allowable that result from the federal alternative minimum tax.~~ For credits associated with business use of the vehicle, the credit must be calculated without consideration of reductions in the credit that result from being part of the general business credit in Internal Revenue Code Section 38. The credit allowed by this section is nonrefundable and if the amount of the credit exceeds the taxpayer's liability for the applicable taxable year, any unused credit may be carried forward and claimed in the five succeeding taxable years.

(B) The credit amount allowed by this section must be calculated without regard to the phaseout period limits of Internal Revenue Code Section 30B(f) ~~and for purposes of the credits allowed pursuant to this section, the provisions of Internal Revenue Code Section 30B are deemed permanent law.~~

SECTION 10.A. Section 12-6-3535(A) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(A) A taxpayer who is allowed a federal income tax credit pursuant to Section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed to claim a credit against income taxes and corporate license fees imposed by Chapter 20 of this title. For the purposes of this section, 'qualified rehabilitation expenditures' and 'certified historic structure' are defined as provided in the Internal Revenue Code Section 47 and the applicable treasury regulations. The amount of the credit is ten percent of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, a taxpayer filing a paper return must attach a copy of the section of the federal income tax return showing the credit claimed, along with other

information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection."

B. This section takes effect upon approval by the Governor and applies to tax years beginning after 2007.

SECTION 11.A. Section 12-6-3550(A) of the 1976 Code, as last amended by Act 342 of 2008, is further amended to read:

"(A) A taxpayer is allowed a credit against income taxes due pursuant to this chapter for costs of voluntary cleanup activity by a nonresponsible party pursuant to Article 7, Chapter 56, ~~of~~ Title 44, the Brownfields/Voluntary Cleanup Program, in the manner provided in this section."

B. This section takes effect upon approval by the Governor, and applies to a party to a voluntary cleanup contract entered into pursuant to Section 44-56-750 after June 10, 2008.

SECTION 12.A. Section 12-6-3585(C) of the 1976 Code, as last amended by Act 116 of 2007, and (E) as added by Act 319 of 2006, is amended to read:

"(C) The use of the credit is limited to the taxpayer's applicable income, bank, or premium tax or license fee liability for the tax year of the taxpayer after the application of all other credits. An unused credit may be carried forward ten tax years of the taxpayer after the end of the tax year of the taxpayer during which the qualified contribution was made.

(E) 'Taxpayer' means an individual, corporation, partnership, trust, bank, insurance company, or other entity having a state income, bank, or insurance premium tax or license fee liability who has made a qualified contribution."

B. This section takes effect upon approval by the Governor and is effective for tax years beginning after December 31, 2005.

SECTION 13.A. Section 12-6-3610(C) of the 1976 Code, as last amended by Act 261 of 2008, is further amended to read:

"(C)(~~1~~) To obtain the amount of credit available to a taxpayer, the taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying property or a qualifying facility, as applicable, placed in service in the previous calendar year. ~~and~~ The State Energy Office must notify the taxpayer ~~that by March first as to whether it qualifies for the credit and the amount of credit allocated available to the taxpayer by March first of that year.~~ by March first as to whether it qualifies for the credit and the amount of credit allocated available to the taxpayer by March first of that year. If approved for the credit a taxpayer may first must claim the approved credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it ~~deems~~ considers necessary to administer the credit.

~~(2) For the state's fiscal year beginning July 1, 2008, the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009."~~

B. This section takes effect upon approval by the Governor for tax years beginning after December 31, 2008.

SECTION 14. Section 12-6-3630 of the 1976 Code, as added by Act 83 of 2007, is amended to read:

"Section 12-6-3630. (A) For taxable years beginning after 2007, and before 2012, a taxpayer is allowed a credit against the income tax imposed pursuant to Chapter 6 ~~or of this title~~, bank tax imposed pursuant to Chapter 11 of this title, license fees imposed pursuant to Chapter 20 of this title, or insurance premium tax imposed pursuant to Chapter 7, Title 38, or a combination of them, for a qualified contribution made by a taxpayer to the South Carolina Hydrogen Infrastructure Development Fund established pursuant to Chapter 46, Title 11. A contribution is not a qualified



contribution if it is subject to a condition or limitation regarding the use of the contribution.

(B) The credit is equal to twenty-five percent of a qualified contribution made by a taxpayer to the fund. The credit must be claimed in the year in which the qualified contribution is made. The credit must be used against the taxpayer's ~~liability on income taxes tax, bank tax, premium insurance taxes tax, or license fees fee liability~~ after the application of all other credits applicable to the taxpayer's tax liability. Unused credits may be carried forward for ten years ~~after the tax year in which a qualified contribution was made.~~ The credit is nonrefundable.

(C) A taxpayer who claims a credit for a qualified contribution pursuant to this section may not claim a deduction for the same qualified contribution.

(D) ~~A taxpayer who claims a credit pursuant to this section must attach to his tax return a copy of a form provided by the authority identifying the taxpayer's qualified contribution.~~ The department may require that a copy of the form identifying the taxpayer's qualified contribution be attached to the taxpayer's return or otherwise provided. The ~~Department of Revenue~~ department may require from the taxpayer additional information identifying the taxpayer's qualified contribution as it considers appropriate."

SECTION 15. Section 12-8-1530(A) of the 1976 Code is amended to read:

"(A) A withholding agent shall file a quarterly return in a form prescribed by the department indicating the total amount withheld pursuant to this chapter during the calendar quarter. ~~The~~Unless the withholding agent has complied with the provisions of subsection (B), a return must be filed even in quarters when no income tax has been withheld for every period even if no income tax has been withheld. The return must be filed on or before dates required for filing federal quarterly withholding returns specified in Internal Revenue Code Section 6071 and Internal Revenue Code Regulation Section 31.6071(a)(1), except the fourth quarter return. The fourth quarter return is due on or before the last day of February following the calendar year of the withholding."

SECTION 16. Section 12-8-1550(C) of the 1976 Code is amended to read:

"(C) Where essentially the same information required to be submitted by Section 12-8-1540 is required to be submitted to ~~the Internal Revenue Service~~a federal agency on magnetic media, the same method must be used for purposes of this section or by other electronic means, the department may prescribe either an electronic or magnetic media method for submitting this information."

SECTION 17.A. Section 12-10-80(C)(3)(f) of the 1976 Code, as last amended by Act 313 of 2008, is further amended to read:

"(f) employee relocation expenses associated with new or expanded qualifying service-related facilities as defined in Section 12-6-3360(M)(13) or new or expanded technology intensive facilities as defined in Section 12-6-3360(M)(14) or relocation expenses associated with new national, regional, or global headquarters as defined in Section 12-6-3410(J)(1)(a) or relocation expenses associated with an expanded research and development facility to include personnel and laboratory research and development equipment;"

B. Section 12-10-80(J) of the 1976 Code, as added by Act 313 of 2008, is amended to read:

"(J) Where the qualifying business that creates new jobs under this ~~section~~chapter is a qualifying service-related facility as defined in Section 12-6-3360(M)(13), the determination of the number of jobs created must be based on the total number of new jobs created within five years of the effective date of the revitalization agreement, without regard to ~~monthly or other averaging~~any monthly average described in Section 12-6-3360."

SECTION 18. Section 12-20-100(A)(1) of the 1976 Code is amended to read:

"(1) one dollar for each thousand dollars, or fraction of a thousand dollars, of fair market value of property owned and

used within this State in the conduct of business as determined ~~by the department~~ for property tax purposes for the preceding taxable year; and"

SECTION 19. Section 12-21-2575 of the 1976 Code is amended to read:

"Section 12-21-2575. ~~In lieu~~ Instead of the issuance of tickets to be collected and retained as provided for in this article, the department may authorize or approve other methods of accounting for paid admissions."

SECTION 20. Section 12-36-910(B)(6) and (7) of the 1976 Code, as added by Act 161 of 2005 and Act 386 of 2006, respectively, are amended to read:

~~"(6) gross proceeds accruing or proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property;~~

~~(7) gross proceeds accruing or proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible personal property, whether or not the contracts are purchased in conjunction with the sale of tangible personal property."~~

SECTION 21.A. Section 12-36-2120(67) of the 1976 Code, as last amended by Act 116 of 2007, is amended to read:

"(67) effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million in real and personal property at a single site in the State over an eighteen-month period. The taxpayer must provide notice of the exemption, and the Department of Revenue may assess taxes owing in the manner provided in Section 12-36-2120 (51). To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the eighteen-month period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the investment requirement or, after the expiration of the eighteen-month period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax-free pursuant to this item but due the State as a result of the taxpayer's failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the investment requirement."

B. Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of qualifying construction materials used in the construction of a single manufacturing or distribution facility, as provided in item (67), is four percent for sales from July 1, 2007, through June 30, 2008, three percent for sales from July 1, 2008, through June 30, 2009, two percent for sales from July 1, 2009, through June 30, 2010, and one percent for sales from July 1, 2010, through June 30, 2011.

C. Section 12-36-2120(70) of the 1976 Code, as added by Act 34 of 2007, is amended to read:

"(70)(a) gold, silver, or platinum bullion, or any combination of this bullion;

(b) coins that are or have been legal tender in the United States or other jurisdiction; and

(c) currency that is or has been legal tender in the United States or other jurisdiction.

~~The department shall prescribe documentation that must be maintained by retailers claiming the exemption allowed by this item. This~~ Sufficient documentation must be ~~sufficient~~ maintained by the retailer to identify each individual sale for which the exemption is claimed."

D. Section 12-36-2120(74) of the 1976 Code, as added by Act 99 of 2007, is amended to read:

"(74) durable medical equipment and related supplies:

(a) as defined under federal and state Medicaid and Medicare laws; and

(b) which is paid directly by funds of this State or the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the ~~sale sales~~ or use tax; ~~and~~

~~(c) sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in this State."~~

E. This section takes effect July 1, 2007.

SECTION 22. Subsection (h) of the second undesignated paragraph in Section 12-37-90 of the 1976 Code is amended to read:

"(h) be the sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, ~~the department~~, or the courts;"

SECTION 23. Section 12-37-220(B)(16)(c) of the 1976 Code, as added by Act 352 of 2008, is amended to read:

~~"(c) The exemption allowed pursuant to subitem (a) of this item extends to real property owned by an organization described in subitem (a) and which~~The real property of any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association if that organization qualifies as a tax exempt organization pursuant to Internal Revenue Code Section 501(c)(3), when and the real property is held for a future use by the organization that would~~qualify for the exemption allowed pursuant to subitem (a) of this item~~ or held for investment by the organization in sole pursuit of the organization's exempt purposes and, while held, this real property is not rented or leased for a purpose unrelated to the exempt purposes of the organization and the use of the real property does not inure to the benefit of any private stockholder or individual. Real property donated to the organization which receives the exemption allowed pursuant to this subitem is allowed the exemption for no more than three consecutive property tax years. If real property acquired by the organization by purchase receives the exemption allowed pursuant to this subitem and is ~~subsequently~~later sold without ever having been put to the exempt use, the exemption allowed pursuant to this subitem is ~~deemed~~ considered terminated as of December thirty-first preceding the year of sale and the property is subject to property tax for the year of sale to which must be added a recapture amount equal to the property tax that would have been due on the real property for not more than the four preceding years in which the real property received the exemption allowed pursuant to this subitem. The recapture amount is ~~deemed~~considered property tax for all purposes for payment and collection."

SECTION 24. Section 12-37-220(B)(23) of the 1976 Code is amended to read:

"(23) Notwithstanding ~~any other~~another provision of law, property ~~heretofore~~ exempt from ad valorem taxation by reason of the imposition upon ~~such that~~ property or the owner of ~~such that~~ property of a tax other than an ad valorem tax pursuant to the provisions of Section 12-11-30, Section 12-13-50, or Section ~~12-21-1080~~12-21-1085 ~~shall continue to be entitled to such exemption~~is exempt."

SECTION 25. Section 12-44-30(18) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(18) 'Sponsor' means one or more entities ~~which that~~ sign the fee agreement with the county and ~~makes~~make the minimum investment, subject to the provisions of Section 12-44-40, each of which makes the minimum investment as provided in Section ~~12-44-30~~(13)(14) and also includes a sponsor affiliate unless the context clearly indicates

otherwise. If a project consists of a manufacturing, research and development, corporate office, or distribution facility, as those terms are defined in Section 12-6-3360(M), each sponsor or sponsor affiliate is not required to invest the minimum investment if the total investment at the project exceeds ten million dollars."

SECTION 26. Section 12-54-70(a) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(a) The department may allow ~~further~~ an extension of time for the filing of returns or remitting of tax due required by the provisions of law administered by the department. The request for an extension must be filed with the department on or before the day the return of the tax is due. Except as otherwise provided ~~in this section~~, the department may allow an extension of time ~~not to exceed~~ up to six months, or if applicable, the extended time period allowed to file the taxpayer's corresponding federal return. A tentative return is required reflecting one hundred percent of the anticipated tax to be paid for the taxable period, to be accompanied by a remittance for the tentative tax liability. Interest at the rate provided in Section 12-54-25, calculated from the date the tax was originally due, must be added to the balance due whenever an extension to file or to remit tax due is granted."

SECTION 27. Section 12-54-85(C) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(C) Taxes may be determined and assessed after the thirty-six month limitation if:

- (1) there is fraudulent intent to evade the taxes;
- (2) the taxpayer failed to file a return or document as required by law;
- (3) there is a twenty percent understatement of the total of all taxes required to be shown on the return or document. The taxes in this case may be assessed at any time within seventy-two months from the date the return or document was filed or due to be filed, whichever is later. For the purpose of this item, the total of all taxes required to be shown on the return is the total of all taxes required to be shown on the return before any reduction for estimated payments, withholding payments, other prepayments, or discount allowed for timely filing of the return and payment of the tax due, but that amount must be reduced by ~~another credit~~ other credits that may be claimed on the return;
- (4) the person liable for any taxes consents in writing, before the expiration of the time prescribed in this section for assessing taxes due, to the assessment of the taxes after the time prescribed by this section; or
- (5) the tax is a use tax imposed under Chapter 36 of this title, or a local use tax administered and collected by the department on behalf of a local jurisdiction, and the assessment of the use tax is the result of information received from, or as a result of exchange agreements with, other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes in this case may be assessed at any time within twelve months after the department receives the information, but no later than seventy-two months after the last day the use tax may be paid without penalty."

SECTION 28. Section 12-54-240(A) of the 1976 Code is amended to read:

"(A) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for a person wilfully to divulge or make known in any manner any particulars set forth or disclosed in any report or return required ~~under~~ pursuant to Chapters 6, 8, 11, 13, 16, 20, or 36 or Article 17 ~~of~~, Chapter 21 of this title. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. If the offender is an officer or an employee of the State and is convicted of a violation of this section, he must be dismissed from office and is disqualified from holding any public office in this State for a period of five years ~~thereafter~~ after that. If the offender is an officer or employee of a company retained by the State on an independent contract basis ~~under~~ pursuant to subsection (B)(3) of this section or pursuant to Section 12-4-350 and the officer or employee is convicted of a violation of this section, the contract is immediately terminated and the company is not eligible to contract with the State for this

purpose for a period of five years ~~thereafter~~ after that."

SECTION 29. Section 12-63-20(A) of the 1976 Code, as last amended by Act 261 of 2008, is further amended to read:

"(A)(1) An incentive payment for an alternative fuel purchase is provided beginning after June 30, 2009, and ending before July 1, 2012, and shall be provided from the general fund, excluding revenue derived from the sales and use tax as follows:

(a) five cents to the retailer for each gallon of E70 fuel or greater sold provided that the ethanol-based fuel is subject to the South Carolina motor fuel user fee;

(b) twenty-five cents to the retailer for each gallon of pure biodiesel fuel sold so that the biodiesel in the blend is at least two percent B2 or greater, provided that the qualified biodiesel content fuel is subject to the South Carolina motor fuel user fee. ~~Biodiesel fuel is a fuel for motor vehicle diesel engines comprised of vegetable oils or animal fats and meeting the specifications of the American Society of Testing and Materials (ASTM) D6751 or (ASTM) D975 blended stock; and~~

(c) twenty-five cents to the retailer or wholesaler for each gallon of pure biodiesel fuel sold as dyed diesel fuel for 'off-road' uses, so that the biodiesel in the blend is at least two percent B2 or greater.

(2) The payments allowed pursuant to this subsection must be made to the retailer upon compliance with verification procedures set forth by the Department of Agriculture.

(3) For purposes of this subsection, 'biodiesel' means the same as in Section 12-28-110(70)."

SECTION 30.A. Section 30-2-320(6) and (7) of the 1976 Code, as added by Act 190 of 2008, is amended to read:

"(6) on a document filed in the official records of the courts; ~~and~~

(7) to an employer for employment verification or in the course of administration or provision of employee benefit programs, claims, and procedures related to employment including, but not limited to, termination from employment, retirement from employment, injuries suffered during the course of employment, and other such claims, benefits, and procedures; and

(8) by the South Carolina Department of Revenue or its agents or employees for the purposes of administering and collecting any tax, debt, or fee administered by that department and otherwise performing its duties and responsibilities."

B. Section 37-20-180(B)(9) and (10) of the 1976 Code, as added by Act 190 of 2008, is amended to read:

"(9) to a recorded document in the official records of a county; ~~or~~

(10) to a document filed in the official records of the court; or

(11) to the South Carolina Department of Revenue or its agents or employees for the purposes of administering and collecting any tax, debt, or fee administered by that department and otherwise performing its duties and responsibilities."

C. Upon approval by the Governor, this section takes effect December 31, 2008.

SECTION 31. Section 44-43-1360 of the 1976 Code, as last amended by Act 92 of 2007, is further amended to read:

"Section ~~44-43-1360~~. The board may employ a director and other staff as necessary to carry out the provisions of this article; ~~however~~ except that, administration of this article may not exceed twenty percent of the total funds credited to Donate Life South Carolina, excluding the administrative fee paid to the Department of Revenue pursuant to Sections ~~12-6-5065~~ 12-6-5060 and 59-1-143."

SECTION 32. Section 12-20-175 of the 1976 Code is repealed.

SECTION 33. Section 12-36-30 of the 1976 Code is repealed.

SECTION 34. Unless otherwise provided herein, this act takes effect upon approval by the Governor.

----XX----

This web page was last updated on March 25, 2009 at 9:03 AM

# **REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE**

(Neilson, Kirsh, GM Smith & White - Staff Contact: Rena Grant)

---

## **SENATE BILL 12**

---

S. 12 -- Senators Leatherman, Alexander, O'Dell, Cleary, Leventis, Elliott, Lourie, Malloy and Setzler: A BILL TO ESTABLISH THE SOUTH CAROLINA TAXATION REALIGNMENT COMMISSION, TO PROVIDE FOR THE COMMISSION'S MEMBERSHIP, POWERS, DUTIES, AND RESPONSIBILITIES, TO PROVIDE THAT THE COMMISSION MUST CONDUCT A COMPREHENSIVE STUDY OF THE STATE'S TAX SYSTEM AND SUBMIT A REPORT OF ITS RECOMMENDED CHANGES TO FURTHER THE GOAL OF MAINTAINING AND ENHANCING THE STATE AS AN OPTIMUM COMPETITOR IN THE EFFORT TO ATTRACT BUSINESSES AND INDIVIDUALS TO LOCATE, LIVE, WORK, AND INVEST IN THE STATE, AND TO PROVIDE FOR PROCEDURES GOVERNING THE CONSIDERATION OF LEGISLATION RESULTING FROM THE COMMISSION'S RECOMMENDATIONS.

### ***Summary of Bill:***

This bill, as amended, would establish the S.C. Taxation Realignment Commission, which would conduct a comprehensive study of the state's tax system and submit a report of its recommended changes. This Bill would also require the commission to employ a staff director and any other necessary staff to assist the commission in the performance of its duties and responsibilities.

***Introduced:*** 02/26/2009

***Received by Ways and Means:*** 3/2/2009

### ***Estimated Fiscal Impact:***

The Senate and the House of Representatives  
The committee would consist of 11 members all of whom would be non-legislators. The cost per non-legislator per one-day meeting is \$190. Therefore, the total cost for committee members expenses would be \$2,090 per one-day meeting. This cost will be paid by the appointing entity, and any other expenses will be paid equally from the approved accounts of the Senate and House of Representatives. The cost associated with employing a director and staff is at the General Assembly's discretion. For information purposes salary and fringe benefits for a director can be

estimated at \$95,000. Salary and fringe benefits for a single research staff position can be estimated at \$60,000. Other operating expenses excluding rent can be estimated at \$5,000 annually.

***Subcommittee Recommendation:***

Favorable with Amendment

Amendment: Strikes the bill in its entirety and inserts H. 3415 as amended in subcommittee (deletes compensation and changes 3/4 vote to 2/3 vote)

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

[CLICK HERE](#) to Edit Notes/Comments



FISCAL IMPACT STATEMENT ON BILL NO. **S.12, as Amended**

(Doc. No. 001real.dag.docx)

---

TO: The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee  
FROM: Office of State Budget, Budget and Control Board  
ANALYSTS: Beth Quick  
DATE: March 24, 2009 SBD: 2009335

---

AUTHOR: Senator Leatherman PRIMARY CODE CITE: Unknown  
SUBJECT: S.C. Taxation Realignment Commission

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:  
See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:  
\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

Senate Bill 12, as amended, would establish the S.C. Taxation Realignment Commission, which would conduct a comprehensive study of the state's tax system and submit a report of its recommended changes. This Bill would also require the commission to employ a staff director and any other necessary staff to assist the commission in the performance of its duties and responsibilities.

**EXPLANATION OF IMPACT:**

The Senate and the House of Representatives

The committee would consist of 11 members all of whom would be non-legislators. The cost per non-legislator per one-day meeting is \$190. Therefore, the total cost for committee members expenses would be \$2,090 per one-day meeting. This cost will be paid by the appointing entity, and any other expenses will be paid equally from the approved accounts of the Senate and House of Representatives.

The cost associated with employing a director and staff is at the General Assembly's discretion. For information purposes salary and fringe benefits for a director can be estimated at \$95,000. Salary and fringe benefits for a single research staff position can be estimated at \$60,000. Other operating expenses excluding rent can be estimated at \$5,000 annually.

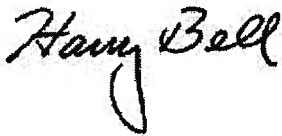
**LOCAL GOVERNMENT IMPACT:**

None.

**SPECIAL NOTES:**

None.

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

CONE/MELTON  
MARCH 25, 2009

---

CLERK OF THE HOUSE

---

REP. PROPOSES THE FOLLOWING AMENDMENT NO. TO  
S. 12  
(DOCUME~1\KIMJAC~1\LOCALS~1\TEMP\XPGRPWISE\9281HTC09):

REFERENCE IS TO PRINTER'S DATE 2/25/09--S.

**AMEND THE JOINT RESOLUTION, AS AND IF  
AMENDED, BY STRIKING ALL AFTER THE  
ENACTING WORDS AND INSERTING:**

**/ SECTION 1. (A) THERE IS CREATED THE  
SOUTH CAROLINA TAXATION REALIGNMENT  
COMMISSION TO BE COMPRISED OF SEVENTEEN  
MEMBERS APPOINTED AS FOLLOWS:**

**(1)TWO MEMBERS APPOINTED BY THE  
GOVERNOR;**

**(2)TWO MEMBERS APPOINTED BY THE PRESIDENT PRO TEMPORE OF THE SENATE;**

**(3)TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;**

**(4)TWO MEMBERS APPOINTED BY THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE;**

**(5)TWO MEMBERS APPOINTED BY THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE;**

**(6)THREE MEMBERS OF THE SENATE TO SERVE EX OFFICIO, TO BE APPOINTED BY THE PRESIDENT PRO TEMPORE OF THE SENATE;**

**(7)THREE MEMBERS OF THE HOUSE TO SERVE EX OFFICIO, TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;**

**(8)THE DIRECTOR OF THE DEPARTMENT OF REVENUE TO SERVE EX OFFICIO.**

**THE MEMBERS APPOINTED PURSUANT TO ITEMS (1) THROUGH (5) ABOVE MAY NOT BE MEMBERS OF THE GENERAL ASSEMBLY AND MUST HAVE SUBSTANTIAL ACADEMIC OR**

**PROFESSIONAL EXPERIENCE OR SPECIALIZATION  
IN ONE OR MORE AREAS OF PUBLIC FINANCE,  
GOVERNMENT BUDGETING AND  
ADMINISTRATION, TAX ADMINISTRATION,  
ECONOMICS, ACCOUNTING, OR TAX LAW.**

**THE MEMBERS APPOINTED PURSUANT TO  
ITEMS (1) THROUGH (7) ABOVE SHALL SERVE AT  
THE PLEASURE OF THEIR APPOINTING  
AUTHORITY.**

**ALL VACANCIES SHALL BE FILLED IN THE  
MANNER OF ORIGINAL APPOINTMENT.**

**(B) THE MEMBERS OF THE COMMISSION:**

**(1) MUST MEET AS SOON AS PRACTICABLE AFTER  
APPOINTMENT AND ORGANIZE ITSELF BY ELECTING ONE OF ITS  
MEMBERS AS CHAIRMAN AND SUCH OTHER OFFICERS AS THE  
COMMISSION MAY CONSIDER NECESSARY. THEREAFTER, THE  
COMMISSION MUST MEET AS NECESSARY TO FULFILL THE DUTIES  
REQUIRED BY THIS JOINT RESOLUTION AT THE CALL OF THE CHAIRMAN  
OR BY A MAJORITY OF THE MEMBERS. A QUORUM CONSISTS OF A  
MAJORITY OF ITS MEMBERS. THE COMMISSION MAY ENGAGE OR  
EMPLOY STAFF OR CONSULTANTS AS MAY BE NECESSARY AND PRUDENT  
TO ASSIST THE COMMISSION IN THE PERFORMANCE OF ITS DUTIES AND  
RESPONSIBILITIES, THE COST OF WHICH MUST RECEIVE THE PRIOR  
APPROVAL OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE  
SPEAKER OF THE HOUSE OF REPRESENTATIVES. ANY STAFF OR  
CONSULTANTS MUST POSSESS AN ACADEMIC BACKGROUND OR  
SUBSTANTIAL CAREER EXPERIENCE IN ONE OR MORE FIELDS**

**INCLUDING, BUT NOT LIMITED TO, ECONOMICS, GOVERNMENT BUDGETING AND ADMINISTRATION, URBAN AND REGIONAL ECONOMIC DEVELOPMENT, ECONOMIC FORECASTING, OR STATE AND LOCAL PUBLIC FINANCE;**

**(2) SHALL SERVE WITHOUT COMPENSATION AND ARE INELIGIBLE FOR THE USUAL MILEAGE, SUBSISTENCE, AND PER DIEM ALLOWED BY LAW FOR MEMBERS OF BOARDS, COMMITTEES, AND COMMISSIONS. OTHER EXPENSES INCURRED BY THE COMMISSION MUST BE PAID EQUALLY FROM APPROVED ACCOUNTS OF EACH HOUSE SUBJECT TO THE APPROVAL OF THE RESPECTIVE OPERATIONS AND MANAGEMENT COMMITTEES;**

**(3) UNLESS AUTHORIZED BY A FURTHER OR SUBSEQUENT ENACTMENT, CONCLUDE THE COMMISSION'S BUSINESS BY JANUARY 1, 2011, AT WHICH TIME THE COMMISSION SHALL BE DISSOLVED. THE GENERAL ASSEMBLY MAY EXTEND THE DATES BY WHICH THE COMMISSION MUST SUBMIT REPORTS REQUIRED BY THIS JOINT RESOLUTION.**

**(C) THE DUTIES OF THE COMMISSION SHALL BE TO:**

**(1) DEVELOP CRITERIA FOR ASSESSING THE EFFECTIVENESS OF THE CURRENT TAX SYSTEM STRUCTURE, AS WELL AS THE LIKELY SYSTEMIC IMPACT OF ANY PROPOSED CHANGES EFFECTING TAX REVENUES AND REPORT THE CRITERIA TO THE GENERAL ASSEMBLY WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS JOINT RESOLUTION, PROVIDED THAT ALL SUCH CRITERIA MUST BE DESIGNED WITH AN EMPHASIS ON THE SYSTEMIC BALANCE OF THE STATE'S REVENUE STRUCTURE FROM THE STANDPOINT OF ADEQUACY, EQUITY, AND EFFICIENCY AND WITH THE GOAL OF MAINTAINING AND ENHANCING THE STATE AS AN OPTIMUM COMPETITOR IN EFFORTS TO ATTRACT BUSINESSES AND INDIVIDUALS TO LOCATE, LIVE, WORK, AND INVEST IN THE STATE;**

**(2) NO LATER THAN DECEMBER 1, 2009, PREPARE AND DELIVER A REPORT AND RECOMMENDATION TO THE CHAIRMAN OF THE**

**SENATE FINANCE COMMITTEE AND THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE SETTING FORTH THE SALES TAX EXEMPTIONS OR LIMITATIONS TO BE RETAINED, MODIFIED OR REPEALED, INCLUDING THE TEXT OF AN AMENDMENT TO THE PROVISIONS OF ARTICLE 21, CHAPTER 36, TITLE 12, THAT EFFECTUATES THE RECOMMENDATIONS CONTAINED IN THE COMMISSION'S REPORT; AND**

**(3) STUDY AND RECOMMEND TO THE GENERAL ASSEMBLY CHANGES REGARDING THE ASSESSMENT OF STATE TAXES LEVIED AND OTHER PROVISIONS AFFECTING STATE REVENUE TO FUND THE OPERATION AND RESPONSIBILITIES OF STATE GOVERNMENT. THE COMMISSION'S STUDY MUST BE A DETAILED, COMPREHENSIVE, AND CAREFUL EVALUATION OF THE STATE'S TAX SYSTEM STRUCTURE, TO INCLUDE ALL REVENUE LAWS OF THE STATE TOGETHER WITH ALL OTHER LAWS OF THE STATE WHICH HAVE A BEARING ON THE STUDY OF THE REVENUE LAWS AND THE RESULTS OF THE STUDY AND ANY LEGISLATIVE RECOMMENDATIONS MUST BE DELIVERED NO LATER THAN DECEMBER 1, 2010. ANY RECOMMENDATIONS BY THE COMMISSION MUST CONSIDER AND INCLUDE IN THE DISCRETION OF THE COMMISSION CHANGES TO: (1) TAXES LEVIED BY ANY LOCAL TAXING ENTITY EXCEPT FOR SALES TAXES ON ITEMS EXEMPT FROM STATE SALES TAX PURSUANT TO SECTION 12-36-2120, AND (2) THE PROPERTY TAX SYSTEM OF THIS STATE REGULATED BY THE GENERAL LAW AND THE CONSTITUTION AND PROPERTY TAX RELIEF PROVIDED BY THE GENERAL ASSEMBLY.**

**(D) THE TEXT OF THE AMENDING LANGUAGE REQUIRED IN SUBSECTION (C)(2) MUST BE DELIVERED TO THE CODE COMMISSIONER WHO MUST TAKE STEPS TO PREPARE THE SUBSTANCE OF THE AMENDMENT TO BE ENROLLED AND ENGROSSED IN THE CODE OF LAWS WITH THE PROVISIONS OF THE AMENDMENT TO TAKE EFFECT JANUARY 1, 2011, IF THE REPORT IS APPROVED BY ENACTMENT OF A JOINT RESOLUTION WHICH DEALS EXCLUSIVELY WITH THE SINGLE SUBJECT**

**AND QUESTION OF APPROVAL OF THE REPORT AND THE ASSOCIATED AMENDMENT, IN ITS ENTIRETY. THE LEGISLATION CONTAINING THE AMENDMENT TO ENACT THE RECOMMENDATIONS OF THE REPORT MADE BY THE COMMISSION MUST BE INTRODUCED IN BOTH HOUSES BY CHAIRMAN OF THE SENATE FINANCE COMMITTEE AND THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE. AN AMENDMENT IS GERMANE TO LEGISLATION RECOMMENDED BY THE COMMISSION ONLY IF THE AMENDMENT SEEKS TO MAKE A TECHNICAL CHANGE NECESSARY TO EFFECTUATE THE PURPOSE OF THE PARTICULAR PROVISION TO BE AMENDED. AN AMENDMENT THAT SEEKS TO ADD, DELETE, OR SUBSTANTIVELY CHANGE A RECOMMENDATION OR OTHER PROVISION AFFECTING STATE REVENUE INCLUDED IN ANY LEGISLATION RECOMMENDED BY THE COMMISSION MAY ONLY BE ADOPTED OR CONCURRED IN BY A TWO-THIRDS MAJORITY VOTE OF THOSE PRESENT AND VOTING IN EACH RESPECTIVE HOUSE.**

**(E) FURTHER LEGISLATIVE RECOMMENDATIONS MADE BY THE COMMISSION MUST BE INTRODUCED IN BOTH HOUSES BY CHAIRMAN OF THE SENATE FINANCE COMMITTEE AND THE CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE RESPECTIVELY.**

**SECTION 2. THIS JOINT RESOLUTION TAKES EFFECT UPON APPROVAL BY THE GOVERNOR. /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**

# REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

(Littlejohn, Battle, Edge, Lucas & Simrill - Staff Contact: Katie Owen)

---

## HOUSE BILL 3590

---

H. 3590 -- Reps. Edge, Clemmons, Hardwick, Hearn and Viers: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 10, TITLE 4 ENACTING THE "LOCAL OPTION TOURISM DEVELOPMENT FEE ACT" SO AS TO ALLOW A COUNTY IN WHICH AT LEAST FOURTEEN MILLION DOLLARS OF STATE ACCOMMODATIONS TAX REVENUES HAVE BEEN COLLECTED IN A FISCAL YEAR AND A MUNICIPALITY LOCATED IN SUCH A COUNTY TO IMPOSE A FEE NOT TO EXCEED ONE PERCENT OF AMOUNTS SUBJECT TO TAX PURSUANT TO CHAPTER 36, TITLE 12, THE SOUTH CAROLINA SALES AND USE TAX ACT, FOR NOT MORE THAN TEN YEARS, TO PROVIDE THAT THE COUNTY MAY IMPOSE THE FEE BY ORDINANCE IN THE UNINCORPORATED AREAS OF THE COUNTY AND A MUNICIPALITY MAY IMPOSE THE FEE BY ORDINANCE IN THE MUNICIPALITY, TO PROVIDE FOR THE ADMINISTRATION OF THE FEE, AND TO PROVIDE THAT USES FOR WHICH THE FEE REVENUE MUST BE APPLIED, INCLUDING TOURISM PROMOTION, PROPERTY TAX ROLLBACK, AND CAPITAL PROJECTS PROMOTING TOURISM CAUSES.

### ***Summary of Bill:***

This bill enacts the "Local Option Tourism Development Fee Act" so as to allow a county in which at least fourteen million dollars of state accommodations tax revenues have been collected in a fiscal year and a municipality located in such a county to impose a fee not to exceed one percent of amounts subject to tax pursuant to the South Carolina Sales and Use Tax Act, for not more than ten years. The legislation provides that the county may impose the fee by ordinance in the unincorporated areas of the county and a municipality may impose the fee by ordinance in the municipality. The legislation provides for the administration of the fee and establishes uses for which the fee revenue must be applied, including tourism promotion, property tax rollback, and capital projects promoting tourism causes.

***Introduced:*** [Click here to enter a date.](#)

***Received by Ways and Means:*** 2/19/2009

### ***Estimated Fiscal Impact:***

This bill is expected to increase local option tourism development fee revenue by \$59,197,158 in FY 2009-10 if the full one percent fee were imposed for the full fiscal year in all counties and municipalities that are eligible to impose this fee.

### ***Subcommittee Recommendation:***

Favorable with Amendment(s)

THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.



***Full Committee Recommendation:*** Pending

***Other Notes/Comments:*** [CLICK HERE to Edit Notes/Comments](#)

# **South Carolina Board of Economic Advisors**

## **Statement of Estimated State Revenue Impact**

---

Date: March 9, 2009 Bill Number: H.B. 3590

Authors: Edge, Clemmons, Hardwick, Hearn and Viers

Committee Requesting Impact: House Ways and Means

---

### **Bill Summary**

A bill to amend the Code of Laws of South Carolina, 1976, by adding Article 9 to Chapter 10, Title 4 enacting the "Local Option Tourism Development Fee Act" so as to allow a county in which at least fourteen million dollars of state accommodations tax revenues have been collected in a fiscal year and a municipality located in such a county to impose a fee not to exceed one percent of amounts subject to tax pursuant to Chapter 36, Title 12, the South Carolina Sales and Use Tax Act, for not more than ten years, to provide that the county may impose the fee by ordinance in the unincorporated areas of the county and a municipality may impose the fee by ordinance in the municipality, to provide for the administration of the fee, and to provide that uses for which the fee revenue must be applied, including tourism promotion, property tax rollback, and capital projects promoting tourism causes.

### **REVENUE IMPACT <sup>11</sup>**

This bill is expected to increase local option tourism development fee revenue by \$59,197,158 in FY 2009-10 if the full one percent fee were imposed for the full fiscal year in all counties and municipalities that are eligible to impose this fee.

### **Explanation**

This bill allows a county in which at least fourteen million dollars of State accommodations tax revenues have been collected in a fiscal year and a municipality located in such a county to impose a fee not to exceed one percent of items subject to the South Carolina Sales and Use Tax Act. The fee may not last longer than ten years. According to Fiscal Year 2007-08 State accommodations tax collections, Horry county is the only county in the State with at least fourteen million dollars in State accommodations tax collections. Based on the current estimate for statewide sales tax revenue inflated to FY 2009-10, we expect this bill to increase local option tourism development fee revenue by \$59,197,158 in FY 2009-10 if the full one percent fee were imposed for the full fiscal year in all counties and municipalities that are eligible to impose this fee.

/s/ WILLIAM C. GILLESPIE, Ph.D.

William C. Gillespie, Ph.D.  
Chief Economist

Analyst: Gibson

<sup>11</sup> This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

FISCAL IMPACT STATEMENT ON BILL NO. **H3590**

(Doc. No. 9169htc09.docx)

---

TO: The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee  
FROM: Office of State Budget, Budget and Control Board  
ANALYSTS: Torina Wood and K. Earle Powell  
DATE: March 20, 2009 SBD: 2009336

---

AUTHOR: Representative Edge PRIMARY CODE CITE: 4-10-910  
SUBJECT: Local Option Tourism Development Fee Act

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:  
\$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:  
\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

House Bill 3590 would enact the Local Option Tourism Development Fee so as to allow a county in which at least \$14 million of state accommodations tax revenues have been collected in a fiscal year and a municipality located in such a county to impose a one percent sales tax increase for not more than ten years.

**EXPLANATION OF IMPACT:**

The Department of Revenue reports this Bill will have no fiscal impact on the General Fund of the State or on Federal and/or Other funds.

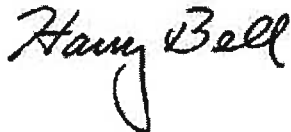
**LOCAL GOVERNMENT IMPACT:**

The Bill is permissive in nature and does not require the imposition of a sales tax increase. However, local expenditures could increase to the extent additional revenue is generated by those counties affected by this Bill.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this or any other Bill.

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

CONE/MELTON  
MARCH 24, 2009

\_\_\_\_\_  
CLERK OF THE HOUSE

---

THE SALES AND INCOME TAX SUBCOMMITTEE PROPOSES THE  
FOLLOWING AMENDMENT NO. TO H. 3590  
(DOCUME~1\KATIEO~1\LOCALS~1\TEMP\XPGRPWISE\9277HTC09):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING SECTION 4-10-940(E), AS CONTAINED  
IN SECTION 1, PAGE 3, AND INSERTING:**

**/ (E) THE REVENUES OF THE FEE IMPOSED  
PURSUANT TO THIS ARTICLE MUST BE REMITTED  
TO THE DEPARTMENT OF REVENUE AND PLACED  
ON DEPOSIT WITH THE STATE TREASURER AND  
CREDITED TO A FUND SEPARATE AND DISTINCT  
FROM THE GENERAL FUND OF THE STATE. AFTER**

**DEDUCTING THE AMOUNT OF ANY REFUNDS MADE AND COSTS TO THE DEPARTMENT OF REVENUE OF ADMINISTERING THE TAX, NOT TO EXCEED ONE PERCENT OF THE REVENUES, THE STATE TREASURER SHALL DISTRIBUTE THE REVENUES AND INTEREST QUARTERLY BASED ON POINT OF COLLECTION TO THE TREASURER OF THE COUNTY OR MUNICIPALITY IN WHICH THE FEE IS IMPOSED AND THE REVENUES MUST BE USED ONLY FOR THE PURPOSES PROVIDED IN SECTION 4-10-970. THE STATE TREASURER MAY CORRECT MISALLOCATIONS BY ADJUSTING SUBSEQUENT DISTRIBUTIONS, BUT THESE ADJUSTMENTS MUST BE MADE IN THE SAME FISCAL YEAR AS THE MISALLOCATIONS. HOWEVER, ALLOCATIONS MADE AS A RESULT OF MUNICIPAL OR COUNTY CODE ERRORS MUST BE CORRECTED PROSPECTIVELY. /**

**AMEND FURTHER, AS AND IF AMENDED, BY STRIKING SECTION 4-10-970, AS CONTAINED IN SECTION 1, PAGE 4, AND INSERTING:**

**/ SECTION 4-10-970. (A)(1) EXCEPT AS PROVIDED IN ITEM (2) OF THIS SUBSECTION, ALL REVENUES AND INTEREST OF THE FEE MUST BE USED EXCLUSIVELY FOR OUT OF STATE TOURISM ADVERTISEMENT AND PROMOTION.**

**(2)REVENUES RECEIVED IN THE FOURTH YEAR OF IMPOSITION MUST BE USED AS PROVIDED IN ITEM (1) EXCEPT THAT UP TO TEN PERCENT MAY BE USED FOR PROPERTY TAX ROLLBACKS OR TOURISM-RELATED CAPITAL PROJECTS, OR A COMBINATION OF THESE PURPOSES. AFTER YEAR FOUR, THE TEN PERCENT USE ALLOWED PURSUANT TO THIS ITEM MAY BE INCREASED TO TWENTY PERCENT. NO CAPITAL PROJECT IS ELIGIBLE TO BE FUNDED DIRECTLY OR INDIRECTLY WITH FEE REVENUES UNLESS THE PROJECT CONSISTS OF CONSTRUCTION OF NEW OR RENOVATION OF EXISTING TOURISM-RELATED FACILITIES INTENDED TO GROW OR MAINTAIN THE OVERNIGHT TOURISM MARKET IN THE COUNTY OR MUNICIPALITY.**

**(3) THE ADDITIONAL USES OF FEE REVENUE ALLOWED PURSUANT TO ITEM (2) OF THIS SUBSECTION ARE ALLOWED ONLY BY ORDINANCE ENACTED BY A RECORDED VOTE OF AT LEAST A TWO-THIRDS MAJORITY OF THE MEMBERS OF THE GOVERNING BODY.**

**(B) THE COUNTY OR MUNICIPALITY SHALL DESIGNATE NO MORE THAN TWO ORGANIZATIONS WITHIN THE COUNTY AREA TO RECEIVE THE REVENUES AND CONDUCT THE PROMOTIONAL ACTIVITIES PROVIDED PURSUANT TO SUBSECTION (A)(1). THESE ORGANIZATIONS MUST BE NONPROFIT DESTINATION MARKETING ORGANIZATIONS REPRESENTING A BROAD CROSS-SECTION OF TOURISM INTERESTS WITHIN THE COUNTY OR MUNICIPALITY IMPOSING THE FEE. IN ADDITION, BEFORE AN ORGANIZATION MAY BE DESIGNATED, IT MUST CERTIFY TO THE IMPOSING COUNTY OR MUNICIPALITY THAT:**

**(1) ITS PROMOTIONAL AND ADVERTISING PROGRAMS ARE BASED ON RESEARCH BASED OUTCOMES;**

**(2) THE ORGANIZATION HAS A PROVEN RECORD OF SUCCESS IN CREATING NEW AND REPEAT VISITATION TO THE COUNTY OR MUNICIPALITY IMPOSING THE FEE;**

**(3) IT HAS SUFFICIENT RESOURCES TO CREATE, PLAN, IMPLEMENT, AND MEASURE THE MARKETING PROGRAM GENERATED BY THE FEE REVENUES;**

**(4) IT WILL USE THE FUNDS ONLY FOR THE PURPOSES PROVIDED PURSUANT TO SUBSECTION (B)(1) OF THIS SECTION.” /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 10, TITLE 4 ENACTING THE "LOCAL OPTION TOURISM DEVELOPMENT FEE ACT" SO AS TO ALLOW A COUNTY IN WHICH AT LEAST FOURTEEN MILLION DOLLARS OF STATE ACCOMMODATIONS TAX REVENUES HAVE BEEN COLLECTED IN A FISCAL YEAR AND A MUNICIPALITY LOCATED IN SUCH A COUNTY TO IMPOSE A FEE NOT TO EXCEED ONE PERCENT OF AMOUNTS SUBJECT TO TAX PURSUANT TO CHAPTER 36, TITLE 12, THE SOUTH CAROLINA SALES AND USE TAX ACT, FOR NOT MORE THAN TEN YEARS, TO PROVIDE THAT THE COUNTY MAY IMPOSE THE FEE BY ORDINANCE IN THE UNINCORPORATED AREAS OF THE COUNTY AND A MUNICIPALITY MAY IMPOSE THE FEE BY ORDINANCE IN THE MUNICIPALITY, TO PROVIDE FOR THE ADMINISTRATION OF THE FEE, AND TO PROVIDE THAT USES FOR WHICH THE FEE REVENUE MUST BE APPLIED, INCLUDING TOURISM PROMOTION, PROPERTY TAX ROLLBACK, AND CAPITAL PROJECTS PROMOTING TOURISM CAUSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 10, Title 4 of the 1976 Code is amended by adding:

**"Article 9**

**Local Option Tourism Development Fee**



1 Section 4-10-910. This article may be cited as the 'Local  
2 Option Tourism Development Fee Act'.  
3

4 Section 4-10-920. For purposes of this article:

5 (1) 'County area' means a county and all municipalities within  
6 its geographical boundaries in which revenues of the state  
7 accommodations tax imposed pursuant to Section 12-36-920 have  
8 aggregated at least fourteen million dollars in a fiscal year.

9 (2) 'County' means the unincorporated areas of a county area  
10 or county government as the use of the term dictates.

11 (3) 'Fee' means the local option tourism development fee  
12 allowed to be imposed as provided in this article.

13 (4) 'Municipality' means a municipal corporation created  
14 pursuant to Chapter 1 of Title 5 or a municipal government as the  
15 use of the term dictates.  
16

17 Section 4-10-930. (A) Subject to the requirements of this  
18 article:

19 (1) a county by ordinance may impose in the county a fee  
20 not to exceed one percent for not more than ten years for the  
21 purposes provided pursuant to Section 4-10-970;

22 (2) a municipality by ordinance may impose in the  
23 municipality a fee not to exceed one percent for not more than ten  
24 years for the purposes provided in Section 4-10-970.

25 (B) The imposition date of the fee allowed pursuant to this  
26 article is the first day of the first month beginning more than sixty  
27 days after the county or municipality files a certified copy of the  
28 imposition ordinance with the South Carolina Department of  
29 Revenue.

30 (C) Once a certified copy of the ordinance is filed with the  
31 Department of Revenue, for the period of imposition provided in  
32 that ordinance, the department may not accept as filed any  
33 additional ordinance from the county or municipality that in any  
34 way relates to the fee allowed to be imposed pursuant to this  
35 chapter except an ordinance reducing or repealing the existing fee.  
36 The department shall accept for filing a certified copy of an  
37 ordinance reducing or repealing the fee and that reduction or repeal  
38 applies in the manner provided in Section 4-10-930(B) for  
39 imposition.  
40

41 Section 4-10-940. (A) The fee allowed by this article is an  
42 amount not to exceed one percent of the gross proceeds of sales or

1 sales price of all amounts subject to the sales and use tax imposed  
2 pursuant to Chapter 36 of Title 12.

3 (B) The fee imposed pursuant to this article must be  
4 administered and collected by the Department of Revenue in the  
5 same manner that sales and use taxes are collected. The  
6 department may prescribe amounts that may be added to the sales  
7 price because of the fee.

8 (C) The fee authorized by this article is in addition to all other  
9 local sales and use taxes and applies to the gross proceeds of sales  
10 in the applicable area that is subject to the tax imposed by Chapter  
11 36 of Title 12 and the enforcement provisions of Chapter 54 of  
12 Title 12. The gross proceeds of the sale of items subject to a  
13 maximum tax in Chapter 36 of Title 12 and the gross proceeds of  
14 sales of unprepared food that lawfully may be purchased with  
15 United State Department of Agriculture food coupons are exempt  
16 from the fee imposed by this article. The fee imposed by this  
17 article also applies to tangible personal property subject to the use  
18 tax in Article 13, Chapter 36 of Title 12.

19 (D) The provisions of subsections (C), (D), (E), (F), and (G) of  
20 Section 4-10-350 apply for fee payors and the fee allowed to be  
21 imposed pursuant to this article, including further identification of  
22 point of sale jurisdictions, mutatis mutandis.

23 (E) The revenues of the fee imposed pursuant to this article  
24 must be remitted to the Department of Revenue and placed on  
25 deposit with the State Treasurer and credited to a fund separate and  
26 distinct from the general fund of the State. After deducting the  
27 amount of any refunds made and costs to the Department of  
28 Revenue of administering the tax, not to exceed one percent of the  
29 revenues, the State Treasurer shall distribute the revenues quarterly  
30 based on point of collection to the treasurer of the county or  
31 municipality in which the fee is imposed and the revenues must be  
32 used only for the purposes provided in Section 4-10-970. The  
33 State Treasurer may correct misallocations by adjusting subsequent  
34 distributions, but these adjustments must be made in the same  
35 fiscal year as the misallocations. However, allocations made as a  
36 result of municipal or county code errors must be corrected  
37 prospectively.

38  
39 Section 4-10-960. The Department of Revenue shall furnish  
40 data to the State Treasurer and to the county and municipal  
41 treasurers receiving revenues for the purpose of calculating  
42 distributions and estimating revenues. The information that must  
43 be supplied to counties and municipalities upon request includes,

1 but is not limited to, gross receipts, net taxable sales, and tax  
2 liability by taxpayers. Information about a specific taxpayer is  
3 considered confidential and is governed by the provisions of  
4 Section 12-54-240. A person violating this section is subject to the  
5 penalties provided in Section 12-54-240.

6  
7 Section 4-10-970. (A)(1) Except as provided in item (2) of  
8 this subsection, all revenues of the fee must be used exclusively for  
9 tourism advertisement and promotion directed at non-South  
10 Carolina residents.

11 (2) Revenues received in the fourth year of imposition must  
12 be used as provided in item (1) except that up to ten percent may  
13 be used for property tax rollbacks or tourism-related capital  
14 projects, or a combination of these purposes. After year four, the  
15 ten percent use allowed pursuant to this item may be increased to  
16 twenty percent. No capital project is eligible to be funded directly  
17 or indirectly with fee revenues unless the project consists of  
18 construction of new or renovation of existing tourism-related  
19 facilities intended to grow or maintain the overnight tourism  
20 market in the county or city.

21 (3) The additional uses of fee revenue allowed pursuant to  
22 item (2) of this subsection are allowed only by ordinance enacted  
23 by a recorded vote of at least a two-thirds majority of the members  
24 of the governing body but not less than three-fifths of the total  
25 membership of the governing body.

26 (B) The county or municipality shall designate one organization  
27 within its jurisdiction to receive the revenues and conduct the  
28 promotional activities provided pursuant to subsection (A)(1).  
29 This organization must be a nonprofit destination marketing  
30 organization representing a broad cross-section of tourism interests  
31 within the county or municipality imposing the fee. In addition,  
32 before an organization may be designated, it must certify to the  
33 imposing county or municipality that:

34 (1) its promotional and advertising programs are based on  
35 research based outcomes;

36 (2) the organization has a proven record of success in  
37 creating new and repeat visitation to the county or municipality  
38 imposing the fee;

39 (3) it has sufficient resources to create, plan, implement, and  
40 measure the marketing program generated by the fee revenues;

41 (4) it will use the funds only for the purposes provided  
42 pursuant to subsection (B)(1) of this section.”

43

1 SECTION 2. This act takes effect upon approval by the Governor.

2 ----XX----

3

# **ECONOMIC DEVELOPMENT, CAPITAL IMPROVEMENT & OTHER TAXES SUBCOMMITTEE**

(Herbkersman, Bingham, Cobb-Hunter, Ott & JR Smith - Staff Contact: Marc Aquino)

---

---

## **HOUSE BILL 3148**

---

---

H. 3148 -- Reps. Clyburn, G.M. Smith, H.B. Brown, Branham, Ott, Agnew, R.L. Brown, Hayes, Battle, Miller, Weeks, J.R. Smith, D.C. Smith, Parks, Rice, Littlejohn, Hosey, Jefferson, Cobb-Hunter, Howard, Cooper, Gunn, McLeod, T.R. Young, Kennedy, Vick, Edge, J.E. Smith, Harrell, A.D. Young, Alexander, Neilson, Lucas, Merrill, Barfield, Bales and Allen: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 50 TO TITLE 11 SO AS TO ENACT THE "SOUTH CAROLINA RURAL INFRASTRUCTURE ACT", TO ESTABLISH THE SOUTH CAROLINA RURAL INFRASTRUCTURE AUTHORITY, AND TO PROVIDE FOR ITS GOVERNANCE, POWERS, AND DUTIES; TO AUTHORIZE THE AUTHORITY TO PROVIDE LOANS AND OTHER FINANCIAL ASSISTANCE TO A MUNICIPALITY, COUNTY, SPECIAL PURPOSE OR PUBLIC SERVICE DISTRICT, AND A PUBLIC WORKS COMMISSION TO FINANCE RURAL INFRASTRUCTURE FACILITIES; TO ALLOW STATE APPROPRIATIONS, GRANTS, LOAN REPAYMENTS, AND OTHER AVAILABLE AMOUNTS TO BE CREDITED TO THE FUND OF THE AUTHORITY; TO AUTHORIZE LENDING TO AND BORROWING BY ELIGIBLE ENTITIES THROUGH THE AUTHORITY.

***Summary of Bill:***

This bill enacts the "South Carolina Rural Infrastructure Act " to establish the South Carolina Rural Infrastructure Authority and provide for its governance, powers, and duties. The legislation authorizes the authority to: provide loans and other financial assistance to a municipality, county, special purpose or public service district, and a public works commission in order to finance rural infrastructure facilities; allow state appropriations, grants, loan repayments, and other available amounts to be credited to the fund of the authority; and, authorize lending to and borrowing by eligible entities through the authority.

***Introduced:*** 1/13/2009

***Received by Ways and Means:*** 1/13/2009

***Estimated Fiscal Impact:***

\$1330 per meeting (see attached impact)

***Subcommittee Recommendation:***

Favorable with Amendment(s)

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

***Same version passed out 2 years ago.***

THE ABOVE CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

FISCAL IMPACT STATEMENT ON BILL NO. **H.3148**

(Doc. No. 11083sd09.docx)

---

TO:	The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee		
FROM:	Office of State Budget, Budget and Control Board		
ANALYSTS:	Beth Quick, K. Earle Powell, and R.J. Stein		
DATE:	March 24, 2009	SBD:	2009271

---

AUTHOR:	Representative Clyburn	PRIMARY CODE CITE:	11-50-10
SUBJECT:	Rural Infrastructure Act		

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

---

**BILL SUMMARY:**

House Bill 3148 would enact the "South Carolina Rural Infrastructure Act", which would establish the South Carolina Rural Infrastructure Authority and provide for its governance, powers, and duties. The Bill would also authorize the authority to provide loans and other financial assistance to municipalities, counties, special purpose and public service districts, and public works commissions for constructing and improving rural infrastructure facilities.

**EXPLANATION OF IMPACT:**

Rural Infrastructure Fund

Section 11-50-70 of the Bill identifies the following sources which may be used to capitalize the Rural Infrastructure fund: State General Fund appropriations made by the General Assembly, federal funds, contributions and donations, all payments to the SC Rural Infrastructure Authority and other lawful sources determined appropriate by the Board of the Authority. Therefore, the impact on the General Fund of the State is at the General Assembly's discretion.

The board of directors will consist of 7 non-legislators. The cost per non-legislator per one-day meeting is \$190. Total cost per meeting can be estimated at \$1,330. If six meetings are held annually the total cost could be estimated at approximately \$8,000. The State Budget and Control Board indicates this Bill would have no impact to the General Fund of the State.

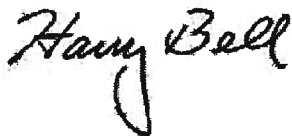
**LOCAL GOVERNMENT IMPACT:**

None.

**SPECIAL NOTES:**

None.

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

**A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 50 TO TITLE 11 SO AS TO ENACT THE "SOUTH CAROLINA RURAL INFRASTRUCTURE ACT", TO ESTABLISH THE SOUTH CAROLINA RURAL INFRASTRUCTURE AUTHORITY, AND TO PROVIDE FOR ITS GOVERNANCE, POWERS, AND DUTIES; TO AUTHORIZE THE AUTHORITY TO PROVIDE LOANS AND OTHER FINANCIAL ASSISTANCE TO A MUNICIPALITY, COUNTY, SPECIAL PURPOSE OR PUBLIC SERVICE DISTRICT, AND A PUBLIC WORKS COMMISSION TO FINANCE RURAL INFRASTRUCTURE FACILITIES; TO ALLOW STATE APPROPRIATIONS, GRANTS, LOAN REPAYMENTS, AND OTHER AVAILABLE AMOUNTS TO BE CREDITED TO THE FUND OF THE AUTHORITY; TO AUTHORIZE LENDING TO AND BORROWING BY ELIGIBLE ENTITIES THROUGH THE AUTHORITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 11 of the 1976 Code is amended by adding:

**"CHAPTER 50**

**South Carolina Rural Infrastructure Act**

Section 11-50-10. This chapter may be referred to as the 'South Carolina Rural Infrastructure Act'.

Section 11-50-20. The General Assembly finds that:

1 (1) Adequate infrastructure facilities are an essential element in  
2 promoting economic growth and development that will provide  
3 jobs for the citizens of South Carolina.

4 (2) Traditional infrastructure financing methods in South  
5 Carolina cannot generate the resources necessary to fund the cost  
6 of rural infrastructure which are required for economic  
7 development.

8 (3) The State of South Carolina has the ability to provide for  
9 alternative methods of financing rural infrastructure which when  
10 combined with existing financing sources and methods will allow  
11 the State to address its rural infrastructure needs in a more timely  
12 and responsive manner.

13 (4) Loans and other financial assistance to municipalities,  
14 counties, special purpose and public service districts, and public  
15 works commissions can play an important part in meeting rural  
16 infrastructure needs. This assistance is in the public interest for the  
17 public benefit and good as a matter of legislative intent.

18 (5) The chapter provides an instrumentality to assist  
19 municipalities, counties, special purpose and public service  
20 districts, and public works commissions in constructing and  
21 improving rural infrastructure by providing loans and other  
22 financial assistance.

23

24 Section 11-50-30. (A) There is created a body corporate and  
25 politic and an instrumentality of the State to be known as the South  
26 Carolina Rural Infrastructure Authority.

27 (B) The authority is governed by a board of directors as  
28 provided in this chapter.

29 (C) The corporate purpose of the authority is to select and assist  
30 in financing qualified rural infrastructure by providing loans and  
31 other financial assistance to municipalities, counties, special  
32 purpose and public service districts, and public works commissions  
33 for constructing and improving rural infrastructure facilities. The  
34 exercise by the authority of a power conferred in this chapter is an  
35 essential public function.

36 (D) The authority shall establish and maintain the South  
37 Carolina Rural Infrastructure Fund into which monies for the  
38 purposes of the authority must be deposited.

39

40 Section 11-50-40. As used in this chapter unless the context  
41 clearly indicates otherwise:

42 (1) 'Authority' means the South Carolina Rural Infrastructure  
43 Authority.



1 (2) 'Board' means the board of directors of the authority.

2 (3) 'Eligible cost' means as applied to a qualified project to be  
3 financed from the Rural Infrastructure Fund, the costs that are  
4 permitted under applicable laws, requirements, procedures, and  
5 guidelines in regard to establishing, operating, and providing  
6 assistance from the authority.

7 (4) 'Eligible project' means rural infrastructure as defined in  
8 item (13).

9 (5) 'Eligible entity' means a municipality, county, special  
10 purpose or public service district, and public works commission.

11 (6) 'Financing agreement' means any agreement entered into  
12 between the authority and an eligible entity pertaining to a loan or  
13 other financial assistance. This agreement may contain, in addition  
14 to financial terms, provisions relating to the regulation and  
15 supervision of a qualified project, or other provisions as the board  
16 may determine. The term 'financing agreement' includes, without  
17 limitation, a loan agreement, trust indenture, security agreement,  
18 reimbursement agreement, guarantee agreement, bond or note,  
19 ordinance or resolution, or similar instrument.

20 (7) 'Loan' means an obligation subject to repayment which is  
21 provided by the authority to a qualified borrower for all or a part of  
22 the eligible cost of a qualified project. A loan may be disbursed in  
23 anticipation of reimbursement for or direct payment of eligible  
24 costs of a qualified project.

25 (8) 'Loan obligation' means a bond, note, or other evidence of  
26 an obligation issued by a qualified borrower.

27 (9) 'Other financial assistance' means, but is not limited to,  
28 grants, contributions, credit enhancement, capital or debt reserves  
29 for bonds or debt instrument financing, interest rate subsidies,  
30 provision of letters of credit and credit instruments, provision of  
31 bond or other debt financing instrument security, and other lawful  
32 forms of financing and methods of leveraging funds that are  
33 approved by the board.

34 (10) 'Qualified borrower' means any eligible entity which is  
35 authorized to construct, operate, or own a qualified project.

36 (11) 'Qualified project' means an eligible project which has  
37 been selected by the authority to receive a loan or other financial  
38 assistance from the authority to defray an eligible cost.

39 (12) 'Revenues' means, when used with respect to the authority,  
40 any receipts, fees, income, or other payments received or to be  
41 received by the authority including, without limitation, receipts  
42 and other payments deposited in the Rural Infrastructure Fund and  
43 investment earnings on the Rural Infrastructure Fund.

1 (13) 'Rural infrastructure project' means the acquisition,  
2 construction, installation, modification, renovation, repair,  
3 extension, renewal, replacement, or rehabilitation of land, interest  
4 in land, buildings, structures, facilities, or other improvements and  
5 the acquisition, installation, modification, renovation, repair,  
6 extension, renewal, replacement, rehabilitation, or furnishing of  
7 fixtures, machinery, equipment, furniture, or other property of any  
8 nature whatsoever used on, in, or in connection with any such land,  
9 interest in land, building, structure, facility, or other improvement,  
10 for the essential public purpose of providing environmental  
11 facilities and services to meet public health and environmental  
12 standards and to aid the development of trade, commerce, industry,  
13 agriculture, and employment opportunities, all of which must be  
14 primarily located in a county designated as distressed or least  
15 developed pursuant to Section 12-6-3360 for 2008.

16

17 Section 11-50-50. The board of directors is the governing  
18 board of the authority. The board consists of seven voting  
19 directors appointed as follows:

20 (1) six members who reside in counties designated as  
21 distressed or least developed pursuant to Section 12-6-3360 for  
22 2008; two each appointed by the Speaker of the House, the  
23 President Pro Tempore of the Senate, and the Governor; and

24 (2) the Secretary of Commerce, ex officio, who shall serve as  
25 chairman.

26 Appointed members shall serve for terms of four years and until  
27 their successors are appointed and qualify except that of the two  
28 members first appointed by the Speaker of the House, President  
29 Pro Tempore of the Senate, and the Governor, one shall serve for a  
30 term of two years and the term must be noted on the appointment.  
31 Vacancies must be filled in the manner of original appointment for  
32 the unexpired portion of the term. Members shall serve without  
33 compensation but are allowed mileage, subsistence, and per diem  
34 allowed by law for members of state boards, committees, and  
35 commissions.

36

37 Section 11-50-60. (A) In addition to the powers contained  
38 elsewhere in this chapter, the authority has all power necessary,  
39 useful, or appropriate to fund, operate, and administer the  
40 authority, and to perform its other functions including, but not  
41 limited to, the power to:

42 (1) have perpetual succession;

1       (2) adopt, promulgate, amend, and repeal bylaws, not  
2 inconsistent with provisions in this chapter for the administration  
3 of the authority's affairs and the implementation of its functions  
4 including the right of the board to select qualifying projects and to  
5 provide loans and other financial assistance;  
6       (3) sue and be sued in its own name;  
7       (4) have a seal and alter it at its pleasure, although the failure  
8 to affix the seal does not affect the validity of an instrument  
9 executed on behalf of the authority;  
10       (5) make loans to qualified borrowers to finance the eligible  
11 costs of qualified projects and to acquire, hold, and sell loan  
12 obligations at prices and in a manner as the board determines  
13 advisable;  
14       (6) provide qualified borrowers with other financial  
15 assistance necessary to defray eligible costs of a qualified project;  
16       (7) enter into contracts, arrangements, and agreements with  
17 qualified borrowers and other persons and execute and deliver all  
18 financing agreements and other instruments necessary or  
19 convenient to the exercise of the powers granted in this chapter;  
20       (8) enter into agreements with eligible entities of this State  
21 for the purpose of planning and providing for the financing of  
22 qualified projects;  
23       (9) establish policies and procedures for the making and  
24 administering of loans and other financial assistance, and establish  
25 fiscal controls and accounting procedures to ensure proper  
26 accounting and reporting by the authority and eligible entities;  
27       (10) acquire by purchase, lease, donation, or other lawful  
28 means and sell, convey, pledge, lease, exchange, transfer, and  
29 dispose of all or any part of its properties and assets of every kind  
30 and character or any interest in it to further the public purpose of  
31 the authority;  
32       (11) procure insurance, guarantees, letters of credit, and other  
33 forms of collateral or security or credit support from any public or  
34 private entity, including any department, agency, or  
35 instrumentality of this State, for the payment of any bonds issued  
36 by it, including the power to pay premiums or fees on any  
37 insurance, guarantees, letters of credit, and other forms of  
38 collateral or security or credit support;  
39       (12) collect or authorize the trustee under any trust indenture  
40 securing any bonds to collect amounts due under any loan  
41 obligations owned by it, including taking the action required to  
42 obtain payment of any sums in default;

1 (13) unless restricted under any agreement with holders of  
2 bonds, consent to any modification with respect to the rate of  
3 interest, time, and payment of any installment of principal or  
4 interest, or any other term of any loan obligations owned by it;

5 (14) borrow money through the issuance of bonds and other  
6 forms of indebtedness as provided in this chapter;

7 (15) expend funds to obtain accounting, management, legal,  
8 financial consulting, and other professional services necessary to  
9 the operations of the authority;

10 (16) expend funds credited to the authority as the board  
11 determines necessary for the costs of administering the operations  
12 of the authority;

13 (17) establish advisory committees as the board determines  
14 appropriate, which may include individuals from the private sector  
15 with banking and financial expertise;

16 (18) procure insurance against losses in connection with its  
17 property, assets, or activities including insurance against liability  
18 for its acts or the acts of its employees or agents or to establish  
19 cash reserves to enable it to act as a self-insurer against any and all  
20 such losses;

21 (19) collect fees and charges in connection with its loans or  
22 other financial assistance;

23 (20) apply for, receive and accept from any source, aid,  
24 grants, and contributions of money, property, labor, or other things  
25 of value to be used to carry out the purposes of this chapter subject  
26 to the conditions upon which the aid, grants, or contributions are  
27 made;

28 (21) enter into contracts or agreements for the servicing and  
29 processing of financial agreements; and

30 (22) do all other things necessary or convenient to exercise  
31 powers granted or reasonably implied by this chapter.

32 (B) The authority is subject to the provisions of Article 1,  
33 Chapter 23 of Title 1, the Administrative Procedures Act.

34  
35 Section 11-50-70. The following sources may be used to  
36 capitalize the Rural Infrastructure Fund and for the authority to  
37 carry out its purposes:

38 (1) state general fund appropriations made by the General  
39 Assembly;

40 (2) federal funds made available to the State;

41 (3) federal funds made available to the State for the  
42 authority;

1 (4) contributions and donations from government units,  
2 private entities, and any other source as may become available to  
3 the authority;

4 (5) all monies paid or credited to the authority, by contract  
5 or otherwise, payments of principal and interest on loans or other  
6 financial assistance made from the authority, and interest earnings  
7 which may accrue from the investment or reinvestment of the  
8 authority's monies; and

9 (6) other lawful sources as determined appropriate by the  
10 board.

11

12 Section 11-50-80. Earnings on balances in the Rural  
13 Infrastructure Fund must be credited and invested as provided by  
14 law. Earnings must be credited to the Rural Infrastructure Fund.  
15 The authority may establish accounts and subaccounts within the  
16 Rural Infrastructure Fund as considered desirable to effectuate the  
17 purposes of this chapter, or to meet the requirements of any state or  
18 federal program. All accounts must be held in trust by the State  
19 Treasurer.

20

21 Section 11-50-90. (A) The authority may provide loans and  
22 other financial assistance to an eligible entity to pay for all or part  
23 of the eligible cost of a qualified project. Before providing a loan  
24 or other financial assistance to a qualified borrower, the authority  
25 must obtain the review and approval of the Joint Bond Review  
26 Committee. The term of the loan or other financial assistance must  
27 not exceed the useful life of the project. The authority may require  
28 the eligible entity to enter into a financing agreement in connection  
29 with its loan obligation or other financial assistance. The authority  
30 shall determine the form and content of loan applications,  
31 financing agreements, and loan obligations including the term and  
32 rate or rates of interest on a financing agreement.

33 (B) The board shall determine which projects are eligible  
34 projects and then select from among the eligible projects those  
35 qualified to receive from the authority a loan or other financial  
36 assistance.

37

38 Section 11-50-100. (A) Eligible entities are authorized to  
39 obtain loans or other financial assistance from the authority  
40 through financing agreements. Qualified borrowers entering into  
41 financing agreements and issuing loan obligations to the authority  
42 may perform any acts, take any action, adopt any proceedings, and  
43 make and carry out any contracts or agreements with the authority

1 as may be agreed to by the authority and any qualified borrower  
2 for the carrying out of the purposes contemplated by this chapter.

3 (B) In addition to the authorizations contained in this chapter,  
4 all other statutes or provisions permitting eligible entities to  
5 borrow money may be utilized by any eligible entity in obtaining a  
6 loan or other financial assistance from the authority to the extent  
7 determined necessary or useful by the eligible entity in connection  
8 with any financing agreement and the issuance, securing, or sale of  
9 loan obligations to the authority. Notwithstanding the foregoing,  
10 obligations secured by ad valorem taxes may be issued by an  
11 eligible entity and purchased by the authority without regard to any  
12 public bidding requirement.

13 (C) An eligible entity may receive, apply, pledge, assign, and  
14 grant a security interest in revenues or ad valorem taxes, to secure  
15 its obligations as provided in this chapter, to meet its obligations  
16 under a financing agreement, or to provide for the construction and  
17 improving of a qualified project.

18  
19 Section 11-50-110. The authority is performing an essential  
20 governmental function in the exercise of the powers conferred  
21 upon it and is not required to pay taxes or assessments upon  
22 property or upon its operations or the income from them, or taxes  
23 or assessments upon property or loan obligations acquired or used  
24 by the authority or upon the income from them.

25  
26 Section 11-50-120. (A) If an eligible entity fails to collect  
27 and remit in full all amounts due to the authority on the date these  
28 amounts are due under the terms of any note or other obligation of  
29 an eligible entity, the authority shall notify the State Treasurer  
30 who, subject to the withholding of amounts under Article X,  
31 Section 14 of the Constitution, shall withhold all or a portion of the  
32 funds of the State and all funds administered by the State allotted  
33 or appropriated to the eligible entity and apply an amount  
34 necessary to the payment of the amount due.

35 (B) Nothing contained in this section mandates the withholding  
36 of funds allocated to an eligible entity which would violate  
37 contracts to which the State is a party or judgments of a court  
38 binding on the State.

39  
40 Section 11-50-130. Neither the authority nor any officer,  
41 employee, or committee of the authority acting on behalf of it,  
42 while acting within the scope of this authority, is subject to any

1 liability resulting from carrying out any of the powers given in this  
2 chapter.

3  
4 Section 11-50-140. Notice, proceeding, or publication, except  
5 those required in this chapter, are not necessary to the performance  
6 of any act authorized in this chapter nor is any act of the authority  
7 subject to any referendum.

8  
9 Section 11-50-150. All money of the authority and in the  
10 Rural Infrastructure Fund, except as authorized by law or provided  
11 in this chapter, must be deposited with and invested by the State  
12 Treasurer. Funds of the authority not needed for immediate use or  
13 disbursement may be invested by the State Treasurer in obligations  
14 or securities which are declared to be legal obligations by the  
15 provisions of Section 11-9-660.

16  
17 Section 11-50-160. Following the close of each state fiscal  
18 year, the authority shall submit an annual report of its activities for  
19 the preceding year to the Governor and to the General Assembly.  
20 An independent certified public accountant shall perform an audit  
21 of the books and accounts of the authority at least once in each  
22 state fiscal year.

23  
24 Section 11-50-170. (A) This chapter, being for the welfare of  
25 this State and its inhabitants, must be liberally construed to effect  
26 the purposes specified in this chapter. However, nothing in this  
27 chapter must be construed as affecting any proceeding, notice, or  
28 approval required by law for the issuance by an eligible entity of  
29 the loan obligations, instruments, or security for loan obligations.

30 (B) Where the governing body of an eligible entity does not  
31 have unlimited fiscal autonomy granting them the right to impose  
32 ad valorem property taxes for general operating purposes without  
33 limitation, the public entity, if applicable, which has the authority  
34 to approve ad valorem property taxes for general operating  
35 purposes without limitation must also approve a loan or security  
36 obligation provided by this chapter.

37  
38 Section 11-50-180. If any provision of this chapter is held or  
39 determined to be unconstitutional, invalid, or otherwise  
40 unenforceable by a court of competent jurisdiction, it is the  
41 intention of the General Assembly that the provision is severable  
42 from the remaining provisions of the chapter and that the holding

1 does not invalidate or render unenforceable another provision of  
2 the chapter.”  
3  
4 SECTION 2. This act takes effect upon approval by the Governor.  
5 ----XX----  
6



HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

CUSHMAN/DOWNEY  
MARCH 24, 2009

\_\_\_\_\_  
CLERK OF THE HOUSE

---

THE ECONOMIC DEVELOPMENT SUBCOMMITTEE PROPOSES  
THE FOLLOWING AMENDMENT No. TO H. 3148  
(DOCUME~1\AQUINOM\LOCALS~1\TEMP\XPGRPWISE\11373AC09\_1):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, SECTION  
11-50-40(13), PAGE 4, LINE 13 AFTER  
/AGRICULTURE,/ BY INSERTING /AQUACULTURE,/**

**AMEND THE BILL, FURTHER SECTION  
11-50-40(13), PAGE 4, LINE 15 BEFORE ./ BY  
INSERTING /OR LOCATED IN A COUNTY WITH A  
PROJECT THAT OTHERWISE MEETS THE  
REQUIREMENTS OF THIS ITEM./**

RENUMBER SECTIONS TO CONFORM.

# REPORT OF THE ECONOMIC DEVELOPMENT, CAPITAL IMPROVEMENT & OTHER TAXES SUBCOMMITTEE

(Herbkersman, Bingham, Cobb-Hunter, Ott & JR Smith - Staff Contact: Marc Aquino)

---

---

## HOUSE BILL 3203

---

---

H. 3203 -- Reps. Brady, Harrison, J.E. Smith, Battle and Simrill: A BILL TO AMEND ARTICLE 4, CHAPTER 56, TITLE 44 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DRYCLEANING FACILITY RESTORATION TRUST FUND, SO AS, AMONG OTHER THINGS, TO FURTHER SPECIFY THAT WHOLESALE DRYCLEANING FACILITIES ARE SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND ARE ELIGIBLE TO SEEK RESTORATION ASSISTANCE UNDER THIS ARTICLE; TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO USE FUNDS, OTHER THAN FUNDS FROM THE DRYCLEANING FACILITY RESTORATION TRUST FUND, IF AN EMERGENCY EXISTS AND FUNDS ARE NOT AVAILABLE FROM THE TRUST FUND AND TO FURTHER PROVIDE THAT THESE FUNDS MUST BE REPAID FROM THE TRUST FUND; TO PROVIDE EXEMPTIONS FROM THE ENVIRONMENTAL SURCHARGE IMPOSED ON THE GROSS PROCEEDS OF SALES OF RETAIL DRYCLEANING FACILITIES, INCLUDING AN EXEMPTION FOR WHOLESALE SALES OF DRYCLEANING SERVICES; TO FURTHER PROVIDE FOR ELIGIBILITY REQUIREMENTS AND DETERMINATIONS AND PROCEDURES FOR REQUESTING AND ISSUING RESTORATION ASSISTANCE, INCLUDING OBTAINING SECONDARY ASSESSMENTS AND THE AMOUNT OF DEDUCTIBLES; TO PROVIDE INITIAL AND ANNUAL REGISTRATION FEES FOR DRYCLEANING FACILITIES ESTABLISHED AFTER OCTOBER 1, 1995 AND TO AUTHORIZE THE PROPERTY OWNER TO REGISTER A FACILITY IF THE OWNER OR OPERATOR OF THE FACILITY DOES NOT; TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF REGISTRATION, TO REQUIRE PRESENTATION OF SUCH CERTIFICATES IN ORDER TO PURCHASE DRYCLEANING SOLVENTS, TO PROHIBIT A SUPPLY FACILITY, OR OTHER DRYCLEANING FACILITY, FROM SELLING DRYCLEANING SOLVENT TO A DRYCLEANING FACILITY IF THE FACILITY DOES NOT POSSESS A CERTIFICATE, AND TO PROVIDE CIVIL PENALTIES; TO SPECIFY REQUIREMENTS FOR A DRYCLEANING FACILITY EXEMPTION CERTIFICATE; AND TO REVISE THE MEMBERSHIP OF THE DRYCLEANING ADVISORY COUNCIL.

***Summary of Bill:***

This bill revises provisions for the Drycleaning Facility Restoration Trust Fund to specify that **wholesale drycleaning facilities** are subject provisions, and are eligible to seek restoration assistance. Additionally, DHEC is authorized to use funds, other than funds from the Drycleaning Facility Restoration Trust Fund, if an emergency exists and funds are not available from the trust fund. The legislation provides exemptions from the environmental surcharge imposed on the gross proceeds of sales of retail drycleaning facilities, including an exemption for wholesale sales of drycleaning services. The legislation further provides for eligibility

THE ABOVE CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

requirements and determinations and procedures for requesting and issuing restoration assistance, including obtaining secondary assessments and the amount of deductibles. The legislation provides for initial and annual registration fees for drycleaning facilities established after October 1, 1995. The legislation authorizes the property owner to register a facility if the owner or operator of the facility does not. The legislation provides for the issuance of certificates of registration and requires presentation of such certificates in order to purchase drycleaning solvents. The legislation prohibits a supply facility, or other drycleaning facility, from selling drycleaning solvent to a drycleaning facility if the facility does not possess a certificate. The legislation provides civil penalties, specifies requirements for a drycleaning facility exemption certificate, and revises the membership of the Drycleaning Advisory Council.

***Introduced:*** 1/13/2009

***Received by Ways and Means:*** 1/13/2009

***Estimated Fiscal Impact:***

No Impact

***Subcommittee Recommendation:***

Favorable

***Full Committee Recommendation:***

Pending

FISCAL IMPACT STATEMENT ON BILL NO. H3203

(Doc. No. 11057ac09.docx)

---

TO: The Honorable Daniel T. "Dan" Cooper, Chairperson, House Ways and Means Committee  
FROM: Office of State Budget, Budget and Control Board  
ANALYSTS: Torina Wood and R.J. Stein  
DATE: March 24, 2009 SBD: 2009333

---

AUTHOR: Representative Brady PRIMARY CODE CITE: 44-56-410  
SUBJECT: Drycleaning Facility Restoration Trust Fund

---

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

\$0 (No additional expenditures or savings are expected)

---

**BILL SUMMARY:**

House Bill 3203 amends Article 4, Chapter 55, Title 44, of the Code of Laws of South Carolina, 1976, relating to the Drycleaning Facility Restoration Trust Fund, so as to, among other things, specify that wholesale drycleaning facilities are subject to the provisions of the Article and are eligible to seek restoration assistance, to authorize DHEC to use funds, other than Trust Funds, if an emergency exists and Trust Funds are not available, to provide exemptions from the environmental surcharge imposed on the gross proceeds of sales of retail facilities, to authorize the property owner to register the facility if the owner or operator does not, and to provide for the issuance of certificates of registration.

**EXPLANATION OF IMPACT:**

Department of Revenue

The Department indicates this Bill will not have a fiscal impact on the General Fund of the State or on Federal and/or Other funds as costs incurred to administer, collect, and enforce the Trust Fund would be covered through revenues and registration fees collected.

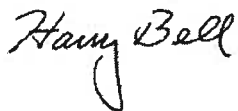
Department of Health and Environmental Control

The Department indicates that there should be no impact on the State General Fund since the Article specifies the purposes for which the Fund may and may not be used, and declares that "the State accepts no financial responsibility as a result of the creation of the Fund." The Bill authorizes the Department to use other funds to pay for emergency clean-up (provided the commitments exceed the current balance) and also authorizes the Fund to repay the Department's other sources used to pay for emergency clean-up.

**SPECIAL NOTES:**

Although section 44-56-420 specifies the State accepts no financial responsibility as a result of creation of the fund, the Bill strikes language in that section which states "At no time shall monies from the general fund be obligated to supplement the fund".

Approved by:



Harry Bell  
Assistant Director, Office of State Budget

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

**A BILL**

11 TO AMEND ARTICLE 4, CHAPTER 56, TITLE 44 OF THE  
12 CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING  
13 TO THE DRYCLEANING FACILITY RESTORATION TRUST  
14 FUND, SO AS, AMONG OTHER THINGS, TO FURTHER  
15 SPECIFY THAT WHOLESALE DRYCLEANING FACILITIES  
16 ARE SUBJECT TO THE PROVISIONS OF THIS ARTICLE  
17 AND ARE ELIGIBLE TO SEEK RESTORATION  
18 ASSISTANCE UNDER THIS ARTICLE; TO AUTHORIZE THE  
19 DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
20 CONTROL TO USE FUNDS, OTHER THAN FUNDS FROM  
21 THE DRYCLEANING FACILITY RESTORATION TRUST  
22 FUND, IF AN EMERGENCY EXISTS AND FUNDS ARE NOT  
23 AVAILABLE FROM THE TRUST FUND AND TO FURTHER  
24 PROVIDE THAT THESE FUNDS MUST BE REPAID FROM  
25 THE TRUST FUND; TO PROVIDE EXEMPTIONS FROM THE  
26 ENVIRONMENTAL SURCHARGE IMPOSED ON THE  
27 GROSS PROCEEDS OF SALES OF RETAIL DRYCLEANING  
28 FACILITIES, INCLUDING AN EXEMPTION FOR  
29 WHOLESALE SALES OF DRYCLEANING SERVICES; TO  
30 FURTHER PROVIDE FOR ELIGIBILITY REQUIREMENTS  
31 AND DETERMINATIONS AND PROCEDURES FOR  
32 REQUESTING AND ISSUING RESTORATION ASSISTANCE,  
33 INCLUDING OBTAINING SECONDARY ASSESSMENTS  
34 AND THE AMOUNT OF DEDUCTIBLES; TO PROVIDE  
35 INITIAL AND ANNUAL REGISTRATION FEES FOR  
36 DRYCLEANING FACILITIES ESTABLISHED AFTER  
37 OCTOBER 1, 1995 AND TO AUTHORIZE THE PROPERTY  
38 OWNER TO REGISTER A FACILITY IF THE OWNER OR  
39 OPERATOR OF THE FACILITY DOES NOT; TO PROVIDE  
40 FOR THE ISSUANCE OF CERTIFICATES OF  
41 REGISTRATION, TO REQUIRE PRESENTATION OF SUCH  
42 CERTIFICATES IN ORDER TO PURCHASE DRYCLEANING

1 SOLVENTS, TO PROHIBIT A SUPPLY FACILITY, OR  
2 OTHER DRYCLEANING FACILITY, FROM SELLING  
3 DRYCLEANING SOLVENT TO A DRYCLEANING FACILITY  
4 IF THE FACILITY DOES NOT POSSESS A CERTIFICATE,  
5 AND TO PROVIDE CIVIL PENALTIES; TO SPECIFY  
6 REQUIREMENTS FOR A DRYCLEANING FACILITY  
7 EXEMPTION CERTIFICATE; AND TO REVISE THE  
8 MEMBERSHIP OF THE DRYCLEANING ADVISORY  
9 COUNCIL.

10  
11 Be it enacted by the General Assembly of the State of South  
12 Carolina:

13  
14 SECTION 1. Article 4, Chapter 56, Title 44 of the 1976 Code is  
15 amended to read:

16  
17 "Article 4

18  
19 Drycleaning Facility Restoration Trust Fund

20  
21 Section 44-56-410. As used in this article:

22 (1) 'Department' means the Department of Health and  
23 Environmental Control.

24 (2) 'Discharge' means leakage, seepage, or other release.

25 (3) 'Drycleaning facility' means a professional ~~retail~~  
26 commercial establishment located in this State ~~that operates or has~~  
27 ~~at some time in the past operated in whole or in part~~ for the  
28 purpose of cleaning clothing and other fabrics ~~from members of~~  
29 ~~the public~~ utilizing a process which involves the use of drycleaning  
30 solvents. In the case of a retail establishment, the establishment is  
31 one that operates or has at some time in the past operated in whole  
32 or in part for the purpose of cleaning clothing and other fabrics  
33 from members of the public, other drycleaning facilities, and dry  
34 drop-off facilities. In the case of a wholesale establishment, the  
35 establishment is one that operates or has at some time in the past  
36 operated in whole or in part for the purpose of cleaning clothing  
37 and other fabrics for other drycleaning facilities or dry drop-off  
38 facilities. 'Drycleaning facility' includes laundry facilities that are  
39 using or have used drycleaning solvents as part of their cleaning  
40 process, but does not include textile mills or uniform rental and  
41 linen supply facilities.

42 (4) 'Drycleaning solvents' means nonaqueous solvents used in  
43 the cleaning of clothing and other fabrics and includes halogenated

1 drycleaning fluids and nonhalogenated cleaners, and their  
2 breakdown products. 'Drycleaning solvents' includes only  
3 solvents originating from use at a drycleaning facility or by a  
4 wholesale supply facility.

5 (5) 'Dry drop-off facility' means a commercial retail store that  
6 receives from customers clothing and other fabrics for drycleaning  
7 at an off-site drycleaning facility and does not clean the clothing or  
8 fabrics at the store utilizing drycleaning solvents.

9 (6) 'Employee' means a natural person employed and paid by  
10 the owner of a drycleaning facility for thirty-five or more hours a  
11 week for forty-five or more weeks a year and on whose behalf the  
12 owner contributes payments to the South Carolina Employment  
13 Security Commission or Department of Revenue as required by  
14 law. Excluded from the meaning of the term 'employee' are  
15 owners of drycleaning facilities and family members of owners,  
16 regardless of the level of consanguinity, if the family members are  
17 not employed and not compensated pursuant to the definition of  
18 the term 'employee' contained in this item. Part-time employees  
19 who are employed and paid for fewer than thirty-five hours a week  
20 for fewer than forty-five weeks a year must not be deemed to be  
21 employees unless their hours and weeks of employment, when  
22 combined with the hours and weeks of employment of another or  
23 other part-time employee or employees, total thirty-five or more  
24 hours a week for forty-five or more weeks a year.

25 (7) 'Person' ~~means any~~ includes an individual, partnership,  
26 corporation, association, trust, estate, receiver, company, limited  
27 liability company, or any other entity or group that is vested with  
28 ~~ownership, dominion, or legal or rightful title to the real property~~  
29 ~~or which has a ground lease interest in the real property on which a~~  
30 ~~drycleaning or wholesale supply facility is or has ever been~~  
31 ~~located.~~

32 (8) 'Wholesale supply facility' means a commercial  
33 establishment that supplies drycleaning solvents to drycleaning  
34 facilities.

35 (9) 'Insolvent' means the approved expenses of the Department  
36 of Health and Environmental Control and the Department of  
37 Revenue as well as the estimated cleanup costs are projected to  
38 exceed the fund balance and projected revenues for a five-year  
39 period commencing on January fifteenth of each year.

40 (10) 'Halogenated drycleaning fluid' means any nonaqueous  
41 solvent formulated, in whole or in part, with ten percent or more  
42 by volume any of the halogenated compounds chlorine, bromine,  
43 fluorine, or iodine. Halogenated drycleaning fluids include

1 perchloroethylene (also known as tetrachloroethylene),  
2 trichloroethylene, and any breakdown components of them.

3 (11) 'Nonhalogenated cleaner' means any nonaqueous solvent  
4 used in a drycleaning facility that contains less than ten percent by  
5 volume of any halogenated compound. Nonhalogenated cleaners  
6 include petroleum based drycleaning solvents and any breakdown  
7 components of them.

8 (12) 'Nonaqueous solvent' means any cleaning formulation  
9 designed to minimize swelling of fabric fibers and containing less  
10 than fifty-one of water by volume.

11 (13) 'Former drycleaning facility' means a drycleaning facility  
12 or wholesale supply facility that ceases to be operated as a  
13 drycleaning facility or wholesale supply facility before July 1,  
14 1995.

15 (14) Property owner' means a person who is vested with  
16 ownership, dominion, or legal or rightful title to the real property  
17 or who has a ground lease interest in the real property on which a  
18 drycleaning or wholesale supply facility is or has ever been  
19 located.

20

21 Section 44-56-420. (A) There is created in the state treasury a  
22 separate and distinct account called the 'Drycleaning Facility  
23 Restoration Trust Fund', revenue for which must be collected and  
24 enforced by the Department of Revenue, and the fund must be  
25 administered by the Department of Health and Environmental  
26 Control and expended for the purposes of this article. However,  
27 the department may contract for the administration of the fund or  
28 any part of the administration of the fund. Judgments, recoveries,  
29 reimbursements, loans, and other fees and charges related to the  
30 implementation of this section, the tax revenues levied, collected,  
31 and credited pursuant to Section 44-56-480, and the registration  
32 fees collected pursuant to Section 44-56-470 must be credited to  
33 the fund. Charges against the fund must be made in accordance  
34 with the provisions of this section. The State accepts no financial  
35 responsibility as a result of the creation of the fund. The creation  
36 of the fund creates no burden upon the State to provide monies for  
37 the fund by any mechanisms other than as provided in this section.  
38 ~~At no time shall monies from the general fund be obligated to~~  
39 ~~supplement the fund.~~ The State may recover to the fund any funds  
40 expended from the fund which were not utilized in accordance  
41 with this article.

42 (B) ~~Whenever~~ If incidents of contamination by drycleaning  
43 solvents related to the operation of drycleaning facilities or



1 wholesale supply facilities pose a threat to the environment or the  
2 public health, safety, or welfare, the department shall obligate  
3 monies available in the fund pursuant to this section to provide for:  
4 (1) the prompt investigation and assessment of the  
5 contaminated sites; however, the owner or operator of a  
6 drycleaning facility or wholesale supply facility or a ~~person~~  
7 property owner must pay for the cost of the investigation and  
8 assessment up to the amount of the owner's, operator's, or  
9 ~~person's~~ property owner's deductible, and the department only  
10 shall provide monies that exceed the owner's, operator's, or  
11 ~~person's~~ property owner's deductible; however, in order to receive  
12 these monies the owner, operator, or ~~person~~ property owner must  
13 comply with this article and the regulations promulgated ~~under~~  
14 pursuant to this article;  
15 (2) the expeditious treatment, restoration, or replacement of  
16 potable water supplies;  
17 (3) the rehabilitation of contaminated drycleaning facility  
18 sites, which consist of rehabilitation of affected soil, groundwater,  
19 and surface waters, using the most cost-effective alternative that is  
20 reliable and feasible technologically and that provides adequate  
21 protection of the public health, safety, and welfare and minimizes  
22 environmental damage in accordance with the site selection and  
23 rehabilitation criteria established by the department, except that  
24 nothing in this article may be construed to authorize the  
25 department to obligate funds for payment of costs which may be  
26 associated with, but are not integral to, site rehabilitation;  
27 (4) the maintenance and monitoring of contaminated sites;  
28 (5) the inspection and supervision of activities described in  
29 this section;  
30 (6) the expenses of administering the fund by the department  
31 including the employment of department staff to carry out the  
32 department's duties described in this article; however, the  
33 department may exclude five percent of the average annual  
34 collections of the fund or the amount required to fund four  
35 employees and the administrative costs associated with these  
36 employees, whichever is greater;  
37 (7) the payment of reasonable costs of restoring property so  
38 as to assure public health and safety, as determined by the  
39 department.  
40 (C) The fund may not be used to:  
41 (1) restore sites which are contaminated by solvents  
42 normally used in drycleaning operations if the activities at a site

1 are not related to the operation of a drycleaning facility or  
2 wholesale supply facility;

3 (2) restore sites that are contaminated by drycleaning  
4 solvents being transported to or from a drycleaning facility or  
5 wholesale supply facility or that are contaminated as a result of the  
6 delivery of drycleaning solvents to a drycleaning facility or  
7 wholesale supply facility on or after July 1, 1995, if the  
8 contamination resulted from gross negligence;

9 (3) fund any costs related to the restoration of a site that is  
10 proposed for listing or is listed on the State Priority List or on the  
11 National Priority List pursuant to the Comprehensive  
12 Environmental Response, Compensation, and Liability Act of  
13 1980, as amended by the Superfund Amendments and  
14 Reauthorization Act of 1986, or any site that is required to obtain a  
15 permit pursuant to the Resource Conservation and Recovery Act,  
16 as amended;

17 (4) pay any costs associated with a fine, penalty, or action  
18 brought against the owner or operator of a drycleaning facility or  
19 wholesale supply facility or a ~~person~~ property owner under local,  
20 state, or federal law;

21 (5) pay any costs incurred before July 1, 1995, for the  
22 remediation of a contaminated site;

23 (6) pay any costs to landscape or otherwise artificially  
24 improve a contaminated site;

25 (7) pay any contamination assessment or costs restoration  
26 before the actual date of the first payment of registration fees for  
27 the site pursuant to Section 44-56-470(B);

28 (8) pay any costs related to contamination assessment where  
29 no contamination from drycleaning solvents is discovered;

30 (9) pay any costs for work not approved by the department  
31 in accordance with this article or regulations promulgated pursuant  
32 to this article;

33 (10) restore sites that are uniform rental and linen supply  
34 facilities unless the site was operated on or after July 1, 1995, as a  
35 ~~professional-retail~~ drycleaning facility for garments or fabrics  
36 belonging to the public and has participated in the fund;

37 (11) restore sites that are no longer operated as drycleaning  
38 facilities or coin-operated drycleaning facilities where the owner,  
39 operator, or ~~person~~ property owner has not paid a registration fee  
40 for the site pursuant to Section 44-56-470(B) and has not been  
41 involved in the drycleaning industry after October 1, 1995.

42 (D) The department shall promulgate regulations that provide  
43 for an initial contamination assessment to determine whether a

1 drycleaning facility or wholesale supply facility is contaminated by  
2 drycleaning solvents. Payment for the initial assessment is as  
3 provided for in subsection (B), and site rehabilitation portions of  
4 the program must be administered through direct payments to  
5 contractors actually accomplishing the site rehabilitation and not  
6 through reimbursement to drycleaning or wholesale supply facility  
7 owners, operators, or ~~persons~~ property owners. All services  
8 related to site rehabilitation must be preapproved by the  
9 department before performance in order to receive payment for  
10 services rendered.

11 (E) If the committed money in the fund exceeds the current  
12 ~~fund~~ balance and the department declares a site is an emergency,  
13 ~~the owner or operator of the drycleaning facility, wholesale~~  
14 ~~facility, or person is liable for~~ or the amount committed to a site  
15 has reached the maximum allowable expenditure for any one site  
16 in a given year and the department declares the site is an  
17 emergency, the department may use other funds to pay the cost of  
18 that cleanup. However, once the fund has ~~funds~~ an available  
19 uncommitted balance, the owner, operator, or person who  
20 department's other sources of money that paid for the approved  
21 emergency cleanup must may be reimbursed for the costs incurred  
22 ~~to clean up the site~~ through annual payments which may not  
23 exceed five percent of the total fund's average annual balance if  
24 ~~the cleanup complies with the provisions of this article or~~  
25 ~~regulations promulgated under this article.~~ The fund may not  
26 obligate itself for more than it is estimated to generate through  
27 surcharges, annual fees, and registration fees.

28  
29 Section 44-56-430. (A)(1) An environmental surcharge, equal  
30 to one percent of the gross proceeds of sales of a retail drycleaning  
31 ~~facility must be levied as an environmental surcharge on or a dry~~  
32 ~~drop-off facility is imposed upon~~ every owner or operator of a  
33 retail drycleaning facility or a dry drop-off facility participating in  
34 ~~the drycleaning facility restoration trust fund except for the~~  
35 ~~facilities possessing a valid statement of nonparticipation pursuant~~  
36 ~~to Section 44-56-480(A).~~

37 Exempt from the environmental surcharge imposed in this  
38 subsection are:

39 (a) drycleaning facilities in existence before July 1, 1995,  
40 that possess a Drycleaning Facility Exemption Certificate issued  
41 by the Department of Revenue on or after July 1, 2009;

42 (b) dry drop-off facilities where the clothing or other  
43 fabrics are only cleaned by a drycleaning facility;

1           (i) owned or operated by the same person who owns or  
2 operates the dry drop-off facility;

3           (ii) issued a Drycleaning Facility Exemption Certificate  
4 by the Department of Revenue on or after July 1, 2009; and

5           (iii) where the owner or operator, or related entity, does  
6 not own or operate any other drycleaning facilities that are  
7 participating in the fund through payment of any surcharges or fees  
8 imposed pursuant to this article; and

9           (c) wholesale sales of drycleaning services provided to  
10 another drycleaning facility or a dry drop-off facility.

11       (2) At any time the uncommitted balance of the Drycleaning  
12 Facility Restoration Trust Fund Account exceeds five million  
13 dollars, the one percent of the gross proceeds of sales of  
14 drycleaning surcharge is suspended until that time the  
15 uncommitted balance of the trust fund account becomes less than  
16 one million dollars. The Department of Health and Environmental  
17 Control is responsible for notifying the Department of Revenue  
18 when these amounts have been reached. The suspension of the  
19 environmental surcharge occurs at the end of the month in which  
20 the Department of Revenue is so notified by the Department of  
21 Health and Environmental Control. The lifting of the suspension  
22 occurs on the first day of the month following the month in which  
23 the Department of Revenue is so notified by the Department of  
24 Health and Environmental Control.

25       (B)(1) The ~~initial~~ surcharge imposed by this section is due and  
26 payable on the twentieth day of ~~the third month succeeding the~~  
27 ~~month in which the charge is imposed. Subsequent charges are due~~  
28 ~~and payable on or before the twentieth day of~~ each month for the  
29 preceding month. The Department of Revenue may authorize the  
30 quarterly, semiannual, or annual payment of this surcharge. The  
31 surcharge must be reported on forms and in the manner determined  
32 by the Department of Revenue.

33       (2) The Department of Revenue must administer, collect,  
34 and enforce the surcharge in the manner that the sales and use  
35 taxes are administered, collected, and enforced under Chapter 36  
36 of Title 12, except that no timely payment discount or exemptions  
37 or exclusions are allowed. The provisions of Title 12 apply to the  
38 collection and enforcement of the surcharge by the Department of  
39 Revenue.

40       (3) The Department of Revenue shall retain funds for the  
41 costs incurred to administer, collect, and enforce the fund which  
42 may include a part-time employee with the related expenses for  
43 audit purposes. The funds withheld ~~shall~~ must not exceed the

1 actual costs to administer, collect, and enforce the fund. The  
2 proceeds of the surcharge, after deducting the costs incurred by the  
3 Department of Revenue in administering, auditing, collecting,  
4 distributing, and enforcing the surcharge, must be remitted to the  
5 State Treasurer and credited to the fund and must be used as  
6 provided in Section 44-56-420. For the purposes of this section,  
7 the proceeds of the surcharge include all funds collected and  
8 received by the Department of Revenue, including interest and  
9 penalties on delinquent surcharges.

10 (C) The Department of Health and Environmental Control is  
11 required to report each January fifteenth the current financial  
12 position of the Drycleaning Facility Restoration Trust Fund to the  
13 General Assembly. In addition, Department of Health and  
14 Environmental Control must include projected information that  
15 would enable the General Assembly to determine the solvency of  
16 the fund. At a minimum this must include a five-year budget  
17 projection. This report must also review and comment on the  
18 adequacy of the current program in resolving contamination  
19 problems at both operating and closed drycleaning facilities in this  
20 State.

21  
22 Section 44-56-440. (A) The Board of the Department of  
23 Health and Environmental Control shall establish a moratorium on  
24 administrative and judicial actions by the department concerning  
25 drycleaning facilities and wholesale supply facilities resulting from  
26 the discharge of drycleaning solvents to soil or waters of the State.  
27 This moratorium applies only to those facilities deemed eligible as  
28 defined in this section. The board may review and determine the  
29 appropriateness of the moratorium at least annually. This review  
30 ~~shall~~ must include, but is not limited to, consideration of these  
31 factors:

32 (1) the solvency of the fund as described in Section  
33 44-56-420;

34 (2) prioritization of the sites;

35 (3) public health concerns related to the sites;

36 (4) eligibility of the sites;

37 (5) corrective action plans submitted to the department.

38 After review, the board may suspend all or a portion of the  
39 moratorium if necessary.

40 (B) A drycleaning facility or wholesale supply facility that is  
41 being operated as a drycleaning facility or wholesale supply  
42 facility at the time a request for determination of eligibility is filed  
43 and at which there is contamination from drycleaning solvents is

1 eligible under this section regardless of when the contamination  
2 was discovered if the drycleaning facility or wholesale supply  
3 facility:

4 (1) has been registered with and has paid all annual fees,  
5 surcharges, and solvent fees as required by the Department of  
6 Revenue;

7 (2) is determined by the department to be in compliance with  
8 department regulations regulating drycleaning facilities or  
9 wholesale supply facilities;

10 (3) has third-party liability insurance when and if the  
11 insurance becomes available at a reasonable cost, as determined by  
12 the Department of Insurance, and if the insurance covers liability  
13 for contamination that occurred both before and after the effective  
14 date of the policy;

15 (4) has provided documented evidence of contamination by  
16 drycleaning solvents or where the department, after conducting a  
17 secondary assessment, has documented evidence of contamination  
18 by drycleaning solvents;

19 (5) has not been operated in a grossly negligent manner at  
20 any time after November 18, 1980.

21 ~~(C) A drycleaning facility or wholesale supply facility that~~  
22 ~~ceases to be operated as a drycleaning facility or wholesale supply~~  
23 ~~facility before July 1, 1995, and before the time~~ If a request for  
24 determination of eligibility is filed for a former drycleaning facility  
25 at which there is contamination from drycleaning solvents, the  
26 former drycleaning facility is eligible under this section regardless  
27 of when the contamination was discovered provided; however, the  
28 owner or operator of the drycleaning facility or wholesale supply  
29 facility or person provides shall provide documented evidence of  
30 the contamination by drycleaning solvents and the owner, or  
31 operator, or person has an operating drycleaning facility in the  
32 fund and has paid all annual fees, surcharges, and solvent fees on  
33 every drycleaning facility registered in the fund and in existence  
34 under their control since July 1, 1995, as required by the  
35 Department of Revenue. For any former drycleaning facility  
36 seeking eligibility under this section after November 24, 2006, the  
37 deductible is twenty-five thousand dollars, if the following are  
38 met:

39 (1) the former facility is determined to be eligible; and

40 (2) the owner or operator, who was in the fund on October 1,  
41 1995, applies for money from the fund within six months of  
42 discovering evidence of contamination.

1 (D) A drycleaning facility that has been contaminated as a  
2 result of the discharge of drycleaning solvents by a supplier of  
3 solvents during the delivery of drycleaning solvents to a  
4 drycleaning facility first must utilize the insurance of the supplier  
5 to the full extent of the coverage for site rehabilitation before any  
6 funds may be expended from the fund for the rehabilitation of that  
7 portion of the site which was contaminated by the discharge during  
8 delivery.

9 (E) If the facility started operation before ~~six months after the~~  
10 ~~effective date of this act~~ November 24, 2004, and an eligible  
11 drycleaning or wholesale owner or operator or person applies for  
12 monies from the fund on or before:

13 (1) ~~eighteen months after the effective date of this act~~  
14 November 24, 2005, the deductible is one thousand dollars;

15 (2) ~~thirty months after the effective date of this act~~  
16 November 24, 2006, the deductible is twenty-five thousand dollars.

17 An eligible drycleaning facility that has applied for monies from  
18 the fund ~~prior to the effective date of this paragraph~~ before May  
19 24, 2004, shall have a deductible of one thousand dollars  
20 regardless of any deductible previously assigned to the facility  
21 based on its application date or type of site. Any approved  
22 assessment or remedial costs in excess of one thousand dollars  
23 previously incurred by the owner, operator, or ~~person~~ shall  
24 property owner must be refunded, without interest, to such party  
25 by the department.

26 A facility first starting its operations on or after ~~six months after~~  
27 ~~the effective date of this act~~ November 24, 2004, shall have a  
28 deductible of twenty-five thousand dollars if it is determined to be  
29 eligible and if the owner, operator, or ~~person~~ property owner  
30 applies for money from the fund within six months of obtaining  
31 evidence of contamination.

32 (F)(1) An owner or operator of a drycleaning facility or  
33 wholesale supply facility or ~~person~~ property owner seeking  
34 eligibility under this subsection shall submit an application for  
35 determination of eligibility to the department on forms provided by  
36 the department. The department shall review the application and  
37 request any additional information within ninety days. The  
38 department shall notify the applicant within one hundred eighty  
39 days as to whether the facility is eligible.

40 (2) If the facility is not eligible because contamination has  
41 not been found and the department has determined that the facility  
42 is a high priority, the department shall notify the owner, operator,  
43 or property owner that a secondary assessment must be conducted.

1 If the owner, operator, or property owner can demonstrate, based  
2 on criteria developed by the department, that they are unable to  
3 afford to hire a contractor to conduct this secondary assessment,  
4 the department shall upon payment of one thousand dollars within  
5 thirty days, conduct the secondary assessment.

6 (a) If the payment of one thousand dollars is received  
7 within thirty days, the department shall conduct a secondary  
8 assessment. If evidence of contamination:

9 (i) is found, the payment of one thousand dollars in  
10 excess of the facility deductible must be refunded, without interest;

11 (ii) is not found, the facility can become eligible if at  
12 any time in the future the facility is found to have documented  
13 evidence of contamination by drycleaning solvents, and the owner,  
14 operator, or property owner provides that documentation to the  
15 department within six months of discovery.

16 (b) If the owner, operator, or property owner does not pay  
17 one thousand dollars to the department within thirty days or does  
18 not agree within thirty days to conduct a secondary assessment, the  
19 facility is permanently barred from receiving funding from the  
20 Drycleaning Restoration Trust Fund and the moratorium provided  
21 for in Section 44-56-440(A) does not apply to this facility.

22 (G) Eligibility under this subsection section applies to the site  
23 of the drycleaning facilities or wholesale supply facilities. A  
24 determination of eligibility or ineligibility is not affected by the  
25 subsequent conveyance of the ownership of the drycleaning  
26 facilities or wholesale supply facilities.

27 (H) This section does not apply to a site where the department  
28 has been denied site access to implement this section or to  
29 drycleaning facilities owned or operated by a local government or  
30 by the state or federal government.

31 (I) A site owned by an owner or operator of a drycleaning  
32 facility or a ~~person~~ property owner at any time subsequent to  
33 October 1, 1995, who misrepresents the number of employees  
34 upon which the registration fee provided for in Section 44-56-460  
35 is based is not eligible for funds under this section.

36  
37 Section 44-56-450. (A) In order to identify drycleaning  
38 facilities and wholesale suppliers which have experienced  
39 contamination resulting from the discharge of drycleaning solvents  
40 and to assure the most expedient rehabilitation of these sites, the  
41 owners and operators of drycleaning facilities and wholesale  
42 suppliers and ~~persons~~ property owners are encouraged to detect  
43 and report contamination from drycleaning solvents related to the



1 operation of drycleaning facilities or wholesale supply facilities.  
2 Forms must be distributed to owners and operators of drycleaning  
3 and wholesale supply facilities and to ~~persons~~ property owners.  
4 The Department of Revenue shall use reasonable efforts to identify  
5 and notify owners, operators, and ~~persons~~ property owners of  
6 drycleaning and wholesale supply facilities ~~within six months after~~  
7 ~~the effective date of this act~~ before November 24, 2004, of the  
8 registration requirements by certified mail, return receipt  
9 requested. The Department of Revenue shall provide to the  
10 Department of Health and Environmental Control a copy of each  
11 applicant's registration materials within thirty working days of the  
12 receipt of the materials.

13 (B) A report of drycleaning solvent contamination at a  
14 drycleaning facility made to the department by a person in  
15 accordance with this article or regulations promulgated ~~under~~  
16 pursuant to this article may not be used directly as evidence of  
17 liability for the discharge in a civil or criminal trial arising out of  
18 the discharge.

19  
20 Section 44-56-460. (A) The fund must be used to rehabilitate  
21 sites that pose a significant threat to the public health, safety, or  
22 welfare. The department shall promulgate regulations to establish  
23 priorities for state-conducted rehabilitation at contaminated  
24 drycleaning facilities or wholesale supply facilities sites based  
25 upon factors that include, but are not limited to:

26 (1) the degree to which human health, safety, or welfare may  
27 be affected by exposure to the contamination;

28 (2) the size of the population or area affected by the  
29 contamination;

30 (3) the present and future uses of the affected aquifer or  
31 surface waters, with particular consideration as to the probability  
32 that the contamination is substantially affecting or will migrate to  
33 and substantially affect a known public or private source of potable  
34 water; and

35 (4) the effect of the contamination on the environment.

36 (B) Nothing in this subsection may be construed to restrict the  
37 department from modifying the priority status of a drycleaning  
38 facility or wholesale supply facility rehabilitation site where  
39 conditions warrant. Criteria for determining completion of site  
40 rehabilitation program tasks and site rehabilitation programs must  
41 be based upon the factors set forth in subsection (A)(1) and these  
42 factors:

1 (1) individual site characteristics, including natural  
2 rehabilitation processes;

3 (2) applicable state water quality standards;

4 (3) whether deviation from state water quality standards or  
5 from established criteria is appropriate, based upon the degree to  
6 which the desired rehabilitation level is achievable and can be  
7 reasonably and cost-effectively implemented within available  
8 technologies or control strategies, except that, where a state water  
9 quality standard is applicable, the deviation may not result in the  
10 application of standards more stringent than the standard;

11 (4) it is recognized that restoration of groundwater resources  
12 contaminated with certain drycleaning solvents, such as  
13 perchloroethylene, may not be achievable using currently available  
14 technology. In situations where available technology is not  
15 anticipated to meet water quality standards, the department, at its  
16 discretion, is encouraged to use innovative technology including,  
17 but not limited to, technology which has been field tested through  
18 the federal innovative technology program and which has  
19 engineering and cost data available;

20 (5) nothing in this section may be construed to restrict the  
21 department from temporarily postponing completion of a site  
22 rehabilitation program for which drycleaning restoration funds are  
23 being expended whenever the postponement is considered  
24 necessary in order to make funds available for rehabilitation of a  
25 drycleaning facility or wholesale supply facility site with a higher  
26 priority status;

27 (6) the department shall provide the rehabilitation of eligible  
28 drycleaning facilities and wholesale supply facilities consistent  
29 with this subsection. Nothing in this article subjects the  
30 department to liability for any action that may be required of the  
31 owner, operator, or person by a private party or a local, state, or  
32 federal governmental entity.

33 (C) The department may not expend more than two hundred  
34 fifty thousand dollars from the fund annually to pay for the costs at  
35 any one eligible site for the activities described in Section  
36 44-56-420(B).

37 (D) The department shall promulgate regulations necessary for  
38 the implementation of this section.

39 (E) The department shall create a mechanism in which  
40 consultants' credentials, work objectives and plans, proposed costs  
41 ranging from assessment, cleanup, and monitoring are outlined and  
42 submitted in writing for the department's approval. The  
43 department shall establish a list of those vendors who are qualified

1 to perform work to be financed by the fund. Vendors must be  
2 recertified every two years.

3  
4 Section 44-56-470. (A)(1) For each drycleaning facility  
5 ~~owned and~~ in operation, the owner or operator of the drycleaning  
6 ~~facility or person~~ shall register with and pay initial registration fees  
7 to the Department of Revenue by October 1, 1995, and pay annual  
8 or quarterly renewal registration fees as established by the  
9 Department of Revenue. The fee must be accompanied by a  
10 notarized certification from the owner or operator of the  
11 drycleaning facility, on a form provided by the Department of  
12 Revenue, certifying the number of employees employed by the  
13 owner, or operator of the drycleaning facility and his dry drop-off  
14 facilities, for the twelve-month period preceding payment of the  
15 fee.

16 (2) For each drycleaning facility in operation that was  
17 established after October 1, 1995, the owner or operator of the  
18 drycleaning facility shall register with and pay initial registration  
19 fees to the Department of Revenue, and pay annual or quarterly  
20 renewal registration fees as established by the Department of  
21 Revenue. The fee must be accompanied by a notarized  
22 certification from the owner or operator of the drycleaning  
23 facility, on a form provided by the Department of Revenue,  
24 certifying the number of employees employed by the owner or  
25 operator of the drycleaning facility and his dry drop off facilities  
26 for the twelve-month period preceding payment of the fee.

27 (3) If the owner or operator of the drycleaning facility does  
28 not register a facility under the provisions of this section, the  
29 property owner of the facility may register the facility. Upon  
30 registration by the property owner, the owner or operator of the  
31 drycleaning facility must be notified by the Department of  
32 Revenue of the registration and the owner or operator of the  
33 drycleaning facility must comply with all applicable provisions of  
34 this article, including the payment of subsequent renewal fees  
35 imposed under subsection (B).

36 (4) To register a facility, the property owner must obtain a  
37 notarized certification from the owner or operator of the  
38 drycleaning facility, on a form provided by the Department of  
39 Revenue, certifying the number of employees employed by the  
40 owner or operator of the drycleaning facility and his dry drop off  
41 facilities for the twelve-month period preceding payment of the fee  
42 and must remit the fee imposed pursuant to subsection (B). If the  
43 property owner is unable to obtain information as to the number of

1 employees at the facilities, the property owner must remit the fee  
2 imposed pursuant subsection (B)(3) in order to register the facility.

3 (B) An initial and annual registration fee for each drycleaning  
4 facility with:

5 (1) up to four employees is seven hundred fifty dollars;

6 (2) five to ten employees is one thousand five hundred  
7 dollars;

8 (3) eleven or more employees is two thousand two hundred  
9 fifty dollars.

10 Exempt from the fee imposed pursuant to this section are  
11 drycleaning facilities in existence before July 1, 1995 that possess  
12 a Drycleaning Facility Exemption Certificate issued by the  
13 Department of Revenue on or after July 1, 2009.

14 (C) The provisions of Title 12 apply to the collection and  
15 enforcement of the fees by the Department of Revenue.

16 (D) The Department of Revenue must retain funds for the costs  
17 incurred to collect and enforce the fund which may include a  
18 part-time employee with the related expenses for audit purposes.  
19 The funds withheld ~~shall~~ must not exceed the actual costs to  
20 administer, collect, and enforce the fund. The proceeds of the  
21 registration fee, after deducting the costs incurred by the  
22 Department of Revenue in auditing, collecting, distributing, and  
23 enforcing the registration fee, must be remitted to the State  
24 Treasurer and credited to the fund and must be used as provided in  
25 Section 44-56-420. For the purposes of this section, the proceeds  
26 of the registration fee include all funds collected and received by  
27 the Department of Revenue, including interest and penalties on  
28 delinquent fees.

29 (E) Revenue derived from the registration fees must be  
30 submitted to the State Treasurer and credited to the Drycleaning  
31 Facility Restoration Trust Fund.

32 (F) ~~Before a year after the effective date of this act~~ May 24,  
33 2005, an owner or operator of a drycleaning facility in operation  
34 ~~before six months after the effective date of this act~~ November 24,  
35 2004, shall install dikes or other containment structures around  
36 each machine or item of equipment in which drycleaning solvents  
37 are used and around an area in which solvents or waste containing  
38 solvents are stored. The containment must meet the following  
39 criteria:

40 (1) the dikes or containment structures must be capable of  
41 containing one-third of the capacity of the total tank capacity of  
42 each machine;

1 (2) dikes or containment structures around areas used for  
2 storage of solvents or waste containing solvents must be capable of  
3 containing one hundred percent of the volume of the largest  
4 container stored or retained in the containment structure;

5 (3) all diked containment areas must be sealed or otherwise  
6 made impervious to the drycleaning solvents in use at the facility,  
7 including floor surfaces, floor drains, floor joints, and inner dike  
8 walls;

9 (4) to the extent practicable, an owner or operator of a  
10 drycleaning facility or ~~person~~ property owner shall seal or  
11 otherwise render impervious those portions of all floor surfaces  
12 upon which any drycleaning solvents may leak, spill, or otherwise  
13 be released;

14 (5) containment devices must provide for the temporary  
15 containment of accidental spills or leaks until appropriate response  
16 actions are taken by the owner/operator to abate the source of the  
17 spill and remove the product from all areas on which the product  
18 has accumulated; and

19 (6) materials used in constructing the containment structure  
20 or sealing the floors must be capable of withstanding permeation  
21 by drycleaning solvents in use at the facility for not less than  
22 seventy-two hours.

23 (G) For drycleaning facilities that commence operating on or  
24 after ~~six months after the effective date of this act~~ November 24,  
25 2004, the owners or operators of these facilities or ~~persons~~  
26 property owners, before the commencement of operations, shall  
27 install beneath each machine or item of equipment in which  
28 drycleaning solvents are used a rigid and impermeable  
29 containment vessel capable of containing one hundred percent of  
30 the volume of the largest single tank in the machine or piece of  
31 equipment or one-third of the total tank capacity of each machine,  
32 whichever is greater. Dikes or containment structures must be  
33 installed before delivery of any drycleaning solvents to the facility.  
34 All dikes or containment structures shall meet all criteria of  
35 Section 44-56-470(F).

36 (H) A ~~person~~ property owner or the owner or operator of a  
37 drycleaning facility or wholesale supply facility at which there is a  
38 spill of more than the federally mandated reportable quantity of  
39 drycleaning solvent outside of a containment structure, after July 1,  
40 1995, shall report the spill to the department immediately upon the  
41 discovery of the spill and comply with existing emergency  
42 response regulations.

1 (I) Failure to comply with the requirements of this section  
2 constitutes gross negligence with regard to determining site  
3 eligibility.

4 (J) Effective January 1, 2010, all halogenated solvent must be  
5 delivered by a closed-loop delivery system.

6  
7 Section 44-56-475. (A) Each drycleaning facility registered  
8 in accordance with Section 44-56-470 must be issued an annual  
9 drycleaner's certificate of registration by the Department of  
10 Revenue. The certificate of registration authorized pursuant to this  
11 section is valid beginning the first day of October following the  
12 registration and ending on the last day of the following September.  
13 In the case of a new drycleaning facility registered in accordance  
14 with Section 44-56-470, the certificate of registration authorized  
15 pursuant to this section is valid beginning on the day it is issued  
16 and ending on the last day of the following September.

17 (B) A drycleaning facility's certificate of registration or  
18 drycleaning facility exemption certificate must at all times be  
19 conspicuously displayed at the drycleaning facility.

20 (C) In order to purchase or receive drycleaning solvent from a  
21 wholesale supply facility or another drycleaning facility, a  
22 drycleaning facility must provide the wholesale supply facility or  
23 other drycleaning facility a copy of its current certificate of  
24 registration or drycleaning facility exemption certificate,  
25 whichever is applicable.

26 (D)(1) A wholesale supply facility is prohibited from selling or  
27 transferring drycleaning solvent to any drycleaning facility not in  
28 possession of a current certificate of registration or a drycleaning  
29 facility exemption certificate issued by the Department of Revenue  
30 on or after July 1, 2009. A wholesale supply facility selling or  
31 providing drycleaning solvent in violation of the provisions of this  
32 subsection is subject to a civil penalty of up to ten thousand dollars  
33 for each violation. Each sale or transfer constitutes a separate  
34 violation.

35 (2) A drycleaning facility is prohibited from selling or  
36 transferring drycleaning solvent to any other drycleaning facility  
37 not in possession of a current certificate of registration or a  
38 drycleaning facility exemption certificate issued by the Department  
39 of Revenue on or after July 1, 2009. This prohibition applies even  
40 if the same person owns or operates both drycleaning facilities. A  
41 drycleaning facility selling or providing solvent to another  
42 drycleaning facility in violation of the provisions of this subsection

1 is subject to a civil penalty of up to ten thousand dollars for each  
2 violation. Each sale or transfer constitutes a separate violation.

3 (3) A drycleaning facility not in possession of a current  
4 certificate of registration or a drycleaning facility exemption  
5 certificate issued by the Department of Revenue on or after July 1,  
6 2009, is prohibited from purchasing or receiving drycleaning  
7 solvent. A drycleaning facility purchasing or receiving drycleaning  
8 solvent in violation of the provisions of this subsection is subject  
9 to a civil penalty of up to ten thousand dollars for each violation.  
10 Each purchase or receipt constitutes a separate violation.

11 (E) The Department of Revenue, in addition to all other  
12 penalties authorized by this law and in addition to the provisions of  
13 Section 12-54-90, may revoke one or more certificates of  
14 registration of any owner or operator of a drycleaning facility for  
15 failure to remit any taxes, surcharges, or fees due by the owner or  
16 operator under this article or Title 12 or when the owner or  
17 operator fails, neglects, violates, or refuses to comply with the  
18 provisions of this section.

19  
20 Section 44-56-480. (A) Beginning July 1, 1995, an  
21 environmental surcharge is assessed on the privilege of producing  
22 in, importing into, or causing to be imported into the State  
23 drycleaning solvent. A surcharge of ten dollars per gallon on  
24 halogenated drycleaning fluid and two dollars per gallon on  
25 nonhalogenated cleaner is levied on each gallon to be used for  
26 drycleaning purposes when first imported into or produced in the  
27 State. Nonhalogenated cleaners purchased, produced, or  
28 transported in a nonliquid physical state must be assessed a  
29 surcharge of twenty cents per pound. ~~A drycleaning facility that~~  
30 ~~has made an election not to be under the provisions of this article~~  
31 ~~pursuant to Section 44-56-485(A) or (B) may request a statement~~  
32 ~~of nonparticipation from the Department of Revenue so as to~~  
33 ~~demonstrate its status under this article and its exemption from the~~  
34 ~~surcharge provided for in this subsection. Exempt from the~~  
35 surcharge imposed under this section are sales or distributions to,  
36 or purchases or receipts by, drycleaning facilities in existence prior  
37 to July 1, 1995, that possess a Drycleaning Facility Exemption  
38 Certificate issued by the Department of Revenue on or after July 1,  
39 2009.

40 (B) A person producing in, importing into, or causing to be  
41 imported into this State drycleaning solvent for sale, use, or  
42 otherwise must register with the Department of Revenue and  
43 become licensed for the purposes of remitting the surcharge

1 pursuant to this section. The person must register as a producer or  
2 importer of drycleaning solvent. Persons operating at more than  
3 one location only are required to have a single registration. The fee  
4 for registration is thirty dollars. Failure to register before importing  
5 or producing drycleaning solvent into this State is a misdemeanor  
6 and, upon conviction, the person must be fined up to twenty-five  
7 thousand dollars or imprisoned up to thirty days.

8 (C) The surcharge imposed by this section is due and payable  
9 on or before the twentieth day of the month succeeding the month  
10 of production, importation, or removal from a storage facility. The  
11 surcharge must be reported on forms and in the manner determined  
12 by the Department of Revenue.

13 (D) All drycleaning solvent to be used for drycleaning purposes  
14 which are imported, produced, or sold in this State are presumed to  
15 be subject to the surcharge imposed by this section. ~~An owner,~~  
16 ~~operator, or person;~~ An owner or operator of a drycleaning facility  
17 participating in the fund who has purchased drycleaning solvent  
18 ~~for sale,~~ use, consumption, ~~resale,~~ or distribution in this State must  
19 document that the surcharge imposed by this section has been paid  
20 or must pay the surcharge directly to the Department of Revenue in  
21 accordance with subsection (C). The solvent dealer may pass the  
22 costs of the surcharge to ~~owners,~~ any owner or operators operator,  
23 ~~or persons of a drycleaning facilities~~ facility who has purchased  
24 drycleaning solvent for use, consumption, resale, or distribution in  
25 this State except the surcharge imposed by this section must not be  
26 charged to a facility ~~possessing a statement of nonparticipation~~  
27 ~~pursuant to Section 44-56-480(A) in existence before July 1, 1995,~~  
28 that possesses a Drycleaning Facility Exemption Certificate issued  
29 by the Department of Revenue on or after July 1, 2009.

30 (E) The surcharge imposed by this section must be remitted to  
31 the Department of Revenue. The payment must be accompanied by  
32 the forms as the Department of Revenue prescribes. The proceeds  
33 of the surcharge, after deducting the administrative costs incurred  
34 by the Department of Revenue in administering, auditing,  
35 collecting, distributing, and enforcing the surcharge, must be  
36 remitted by the Department of Revenue to the State Treasurer to be  
37 credited to the Drycleaning Facility Restoration Trust Fund and  
38 must be used as provided in Section 44-56-420. For the purposes  
39 of this section, the proceeds of the surcharge include all funds  
40 collected and received by the Department of Revenue, including  
41 interest and penalties on delinquent surcharges.

42 (F) The Department of Revenue shall administer, collect, and  
43 enforce the surcharge authorized ~~under~~ pursuant to this section in



1 the manner that sales and use taxes are administered, collected, and  
2 enforced under Chapter 36 of Title 12, except no timely payment  
3 discount or exemptions or exclusions are allowed. Provisions of  
4 Title 12 regarding the Department of Revenue's authority to audit  
5 and make assessments, the keeping of books and records, and  
6 interest and penalties on delinquent taxes apply.

7 (G) The Department of Revenue must retain funds for the costs  
8 incurred to administer, collect, and enforce the program. The  
9 proceeds of the surcharge, after deducting the costs incurred by the  
10 Department of Revenue in administering, auditing, collecting,  
11 distributing, and enforcing the surcharge, must be remitted to the  
12 State Treasurer and credited to the fund and must be used as  
13 provided in Section 44-56-420. For the purposes of this section,  
14 the proceeds of the surcharge include interest and penalties  
15 collected by the Department of Revenue.

16 (H) The Department of Revenue may establish audit procedures  
17 and assess delinquent surcharges.

18 (I) Drycleaning solvent used for drycleaning exported from the  
19 ~~first~~ storage facility at which it is held in this State by the producer  
20 or importer is exempt from the surcharge authorized pursuant to  
21 this section. Anyone exporting drycleaning solvent on which the  
22 surcharge has been paid may apply for a refund or credit. A person  
23 who sells drycleaning solvent that is exempt from the collection of  
24 the surcharge pursuant to subsection (D) may apply for a credit or  
25 refund. The Department of Revenue may require information as it  
26 considers necessary in order to approve the refund or credit.

27 (J) The Department of Revenue may authorize:

28 (1) a quarterly return and payment when the surcharge  
29 remitted by the licensee for the preceding quarter did not exceed  
30 one hundred dollars;

31 (2) a semiannual return and payment when the surcharge  
32 remitted by the licensee for the preceding six months did not  
33 exceed two hundred dollars;

34 (3) an annual return and payment when the surcharge  
35 remitted by the licensee for the preceding twelve months did not  
36 exceed four hundred dollars.

37  
38 Section 44-56-485. (A) Notwithstanding any other provision  
39 of this article, this article does not apply to a drycleaning facility  
40 ~~that was in existence on July 1, 1995, that drycleans with~~  
41 ~~nonhalogenated cleaners only, nor to dry drop-off facilities whose~~  
42 ~~clothing and other fabrics are cleaned only by such a drycleaning~~  
43 ~~facility. possesses a Drycleaning Facility Exemption certificate~~

1 issued by the Department of Revenue on or after July 1, 2009. A  
2 Drycleaning Facility Exemption Certificate only may be issued by  
3 the Department of Revenue if the drycleaning facility meets all of  
4 the following requirements:

5 (1) the drycleaning facility was in existence on July 1, 1995;

6 (2)(a) the drycleaning facility drycleaned with  
7 nonhalogenated cleaners only on or before July 1, 1995; or

8 (b) the drycleaning facility drycleaned with halogenated  
9 fluids and nonhalogenated cleaners and elected to remove the  
10 facility from the requirements of this article by election made to  
11 the Department of Revenue before October 1, 1995;

12 (3) the drycleaning facility has never participated in the fund  
13 through payment of any surcharges or fees imposed pursuant to  
14 this article that are administered and collected by the Department  
15 of Revenue;

16 (4) the drycleaning facility requested a Drycleaning Facility  
17 Exemption Certificate from the Department of Revenue by  
18 December 31, 2009; and,

19 (5) the department has verified that the drycleaning facility  
20 has met the requirements contained in items (1) through (4) for the  
21 issuance of the Drycleaning Facility Exemption Certificate to the  
22 drycleaning facility.

23 However, with respect to item (4), if the ownership or operation  
24 of a drycleaning facility that possesses a Drycleaning Facility  
25 Exemption Certificate is transferred to another person after  
26 December 31, 2009, the new owner or operator shall request and  
27 must be provided an updated Drycleaning Facility Exemption  
28 Certificate from the Department of Revenue; otherwise the  
29 certificate remains current.

30 The Drycleaning Facility Exemption Certificate authorized  
31 pursuant to this section only applies to the physical location at  
32 which the drycleaning took place and is not transferable to any  
33 other physical location.

34 Notwithstanding any other provision of this article, this article  
35 also does not apply to dry drop-off facilities where the clothing or  
36 other fabrics are only cleaned by a drycleaning facility:

37 (i) owned or operated by the same person that owns or  
38 operates the dry drop-off facility; and

39 (ii) issued a Drycleaning Facility Exemption Certificate by  
40 the Department of Revenue on or after July 1, 2009; and

41 (iii) where the owner or operator, or related entity, does not  
42 own or operate any other drycleaning facilities participating in the

1 fund through payment of any surcharges or fees imposed pursuant  
2 to this article.

3 However, an owner or operator of a drycleaning facility or  
4 ~~person~~ property owner may elect to place the drycleaning facility  
5 under the provisions of this article by paying the required annual  
6 fee for the drycleaning facility before October 1, 1995. If an owner  
7 or operator of a drycleaning facility or ~~person~~ property owner does  
8 not elect to place a drycleaning facility under this article before  
9 October 1, 1995, the current or a future owner or operator of the  
10 site or ~~person~~ property owner is prohibited from receiving any  
11 funds or assistance ~~under~~ pursuant to this article. Failure to pay the  
12 required annual fee by October 1, 1995, constitutes electing not to  
13 place a drycleaning facility under this article. Additionally, an  
14 owner, operator, or ~~person~~ property owner who does not elect to  
15 place a drycleaning facility that was in existence on July 1, 1995,  
16 under this article is prohibited from receiving any funds or  
17 assistance ~~under~~ pursuant to this article for any site the owner,  
18 operator, or ~~person currently or previously~~ property owner elected  
19 not to place under this article and any site operated or abandoned  
20 before July 1, 1995. If the owner, operator, or property owner  
21 placed a drycleaning facility that was in existence on July 1, 1995  
22 under this article, and met all other requirements including  
23 registration of that site, the facility is eligible pursuant to this  
24 article.

25 (B) A drycleaning facility in existence on July 1, 1995, that  
26 uses halogenated fluids and nonhalogenated cleaners may elect to  
27 remove the facility from the requirements of this article if the  
28 election is made before October 1, 1995. Failure to pay the  
29 required annual fee by October 1, 1995, constitutes electing to  
30 remove a facility from the requirements of this article. An owner,  
31 operator, or ~~person~~ property owner of a facility using halogenated  
32 and nonhalogenated cleaners may not elect to remove a facility  
33 from the requirements of this article for one solvent and not the  
34 other.

35 (C) Notwithstanding subsections (A) and (B) of this section, if  
36 a person or an owner or operator of a drycleaning facility in  
37 existence on July 1, 1995, has made an election not to place a  
38 facility under the provisions of this article as allowed in subsection  
39 (A) or (B) ~~above~~, then the person, owner, or operator may  
40 affirmatively and irrevocably elect to place the drycleaning facility  
41 under the provisions of this article. This election must be made by  
42 registering with the Department of Revenue on or before July 1,  
43 2005, and paying the fees and taxes provided ~~under~~ pursuant to

1 this article. An electing drycleaning facility is liable for payment of  
2 all taxes and fees from the later of July 1, 1995, or the date the  
3 drycleaning facility began operating, but is not liable for any  
4 penalties or interest. An electing drycleaning facility may pay the  
5 back taxes and fees that the facility is required to pay under this  
6 subsection by making monthly installments toward full payment of  
7 all back taxes and fees. The monthly installments must commence  
8 no later than July 1, 2004, and all back taxes and fees must be fully  
9 paid on or before July 1, 2006.

10 (D) Notwithstanding any other provision of this article, any  
11 person or owner or operator of a drycleaning facility that has not  
12 registered with the Department of Revenue and complied with the  
13 provisions of this article may voluntarily register with the  
14 Department of Revenue on or before July 1, 2005, without  
15 incurring any penalties or interest. Payment of all taxes and fees  
16 due pursuant to this article is required to be made from the later of  
17 July 1, 1995, or the date the drycleaning facility began operating.  
18 A person or owner or operator of a drycleaning facility that does  
19 not voluntarily register under this ~~provision~~ subsection is subject to  
20 interest, penalties, and payment of all taxes and fees from the later  
21 of July 1, 1995, or the date the drycleaning facility began  
22 operating. No fees ~~will~~ may be prorated or refunded for a business  
23 in operation for less than twelve months.

24 (E) Notwithstanding any other provisions in this article, the  
25 department may direct the Department of Revenue to allow a  
26 person or owner or operator of a drycleaning facility, who elected  
27 not to place the facility under this article pursuant to subsection  
28 (A) or (B) of this section to register, provided the department finds  
29 that the person or owner or operator of the drycleaning facility  
30 requesting to register did not have notice of this article for more  
31 than ninety days prior to requesting registration. The person or  
32 owner or operator of a drycleaning facility registering pursuant to  
33 this subsection is liable for payment of all taxes or fees, including  
34 interest, from the later of July 1, 1995, or the date the drycleaning  
35 facility began operating; however, the registering person, owner,  
36 or operator is not liable for penalties. No fees ~~will~~ may be prorated  
37 or refunded for a business in operation for less than twelve months.  
38

39 Section 44-56-490. (A) ~~Whenever~~ If the department finds  
40 that a person is in violation of a provision of this article or a  
41 regulation promulgated ~~under~~ pursuant to this article, the  
42 department may issue an order requiring the ~~owner, operator, or~~  
43 person to comply with the provision or regulation or the

1 department may bring civil action for injunctive relief in an  
2 appropriate court of competent jurisdiction.

3 (B) ~~An owner, operator, or~~ A person who violates a provision  
4 of this article, a regulation promulgated ~~under~~ pursuant to this  
5 article, or an order of the department issued ~~under~~ pursuant to  
6 subsection (A) is subject to a civil penalty not to exceed ten  
7 thousand dollars for each day of violation.

8 (C) ~~An owner, operator, or~~ A person who wilfully violates a  
9 provision of this article, a regulation promulgated ~~under~~ pursuant  
10 to this article, or an order of the department issued ~~under~~ pursuant  
11 to subsection (A) is guilty of a misdemeanor and, upon conviction,  
12 must be fined not more than twenty-five thousand dollars ~~per~~ for  
13 each day of violation or imprisoned for not more than one year, or  
14 both.

15

16 Section 44-56-495. (A) There is created the Drycleaning  
17 Advisory Council to advise the Department of Health and  
18 Environmental Control on matters relating to regulations and  
19 standards which affect drycleaning and related industries.

20 (B) The council is composed of the following members:

21 (1) ~~five~~ seven representatives of the drycleaning industry  
22 who are participating in this article;

23 (2) one representative of the wholesale industry;

24 (3) one representative of the ~~real-estate industry~~ drycleaners  
25 who have a Drycleaning Exemption Certificate issued by the  
26 Department of Revenue;

27 (4) ~~one environmental engineer~~;

28 (5) ~~one representative of the banking industry~~;

29 (6) ~~two~~ representatives one representative from the  
30 Department of Health and Environmental Control, ~~one of whom~~  
31 who must be an administrator ~~and one of whom must represent~~  
32 water quality control;

33 (7) ~~a representative of the Department of Revenue~~;

34 (8) ~~a representative of the Department of Insurance~~;

35 (9) ~~a representative of the State Budget and Control Board~~;

36 (10) ~~a representative of the Department of Natural Resources,~~  
37 Division of Water Resources.

38 (C) Members enumerated in ~~subsection~~ subsections (B)(1)  
39 through (5) ~~(B)(5)~~ may must be appointed by the Governor ~~with~~  
40 ~~the advice and consent of the Senate~~ director of the department or  
41 the director's designee and shall serve terms of two years and until  
42 their successors are appointed ~~and qualify.~~ ~~The members~~  
43 ~~enumerated in subsection (B)(6) through (10) must be appointed~~

1 ~~by the respective directors or commissioner of the appropriate~~  
2 ~~agency, and all serve ex officio for terms of two years and until~~  
3 ~~their successors are appointed and qualify.~~ The chairman of the  
4 council must be elected by the members of the council at the first  
5 meeting of each new term.

6 (D) An employee of the Department of Revenue shall attend  
7 meetings of the council to provide the council informal assistance  
8 as to matters involving the surcharges and fees that are imposed  
9 pursuant to this article and which are administered and collected  
10 by the Department of Revenue.

11 (E) The Department of Revenue may disclose to the  
12 department information on a return filed with the Department of  
13 Revenue pursuant to the provisions of Section 44-56-430. The  
14 Department of Revenue and the department may not disclose to the  
15 members enumerated in subsections (B)(1) through (B)(3) or to the  
16 public specific information on a return filed with the Department  
17 of Revenue pursuant to the provisions of Section 44-56-430;  
18 however, the Department of Revenue and the department may  
19 provide these members available statistical information concerning  
20 the surcharge imposed pursuant Section 44-56-430.”

21  
22 SECTION 2. This act takes effect upon approval by the  
23 Governor; however, the amendments to the impositions of the  
24 surcharges and fees imposed pursuant to Sections 44-56-430(A),  
25 44-56-470(A), 44-56-480(A), and 44-56-480(D) of the 1976 Code,  
26 as amended in Section 1 of this act, take effect March 1, 2010.

27 -----XX-----  
28

# **REPORT OF THE ECONOMIC DEVELOPMENT, CAPITAL IMPROVEMENT & OTHER TAXES SUBCOMMITTEE**

(Herbkersman, Bingham, Cobb-Hunter, Ott & JR Smith - Staff Contact: Marc Aquino)

---

---

## **HOUSE BILL 3268**

---

---

H. 3268 -- Rep. Cooper: A BILL TO AMEND SECTION 12-28-2920, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CONSTRUCTION OF TOLL ROADS, SO AS TO REVISE THE METHOD OF DISBURSAL OF FUNDS DERIVED FROM TOLLS, TO PROVIDE FOR THE DISBURSAL OF FUNDS DERIVED FROM QUALIFIED TOLL PROJECTS, TO PROVIDE WHEN TOLLS COLLECTED FROM QUALIFIED TOLL PROJECTS SHALL CEASE, AND TO DEFINE THE TERM "QUALIFIED TOLL PROJECT"; AND TO AMEND SECTION 57-3-200, RELATING TO THE DEPARTMENT OF TRANSPORTATION'S AUTHORITY TO ENTER INTO AGREEMENTS TO FINANCE, CONSTRUCT, AND MAINTAIN HIGHWAYS, ROADS, STREETS, AND BRIDGES, SO AS TO PROVIDE GUIDELINES FOR THE DEPARTMENT'S EXPENDITURE OF FUNDS ON QUALIFIED TOLL PROJECTS AND THE SETTING OF TOLLS ALONG TRANSPORTATION FACILITIES.

**Summary of Bill:** Funds derived from Toll Roads must be used for certain purposes including cost of acquisition, improvement, and refinancing of a toll project.

**Introduced:** 1/14/2009

**Received by Ways and Means:** 1/14/2009

**Estimated Fiscal Impact:**

Pending

**Subcommittee Recommendation:**

Favorable

**Full Committee Recommendation:**

Pending

**Other Notes/Comments:**

Bill passed out of Subcommittee last year as H.4908

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3268**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Cooper

Document Path: I:\council\bills\swb\5660cm09.docx

Companion/Similar bill(s): 413

Introduced in the House on January 14, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Toll roads

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
-----		
1/14/2009	House	Introduced and read first time HJ-16
1/14/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-16

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

1/14/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)



**A BILL**

TO AMEND SECTION 12-28-2920, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CONSTRUCTION OF TOLL ROADS, SO AS TO REVISE THE METHOD OF DISBURSAL OF FUNDS DERIVED FROM TOLLS, TO PROVIDE FOR THE DISBURSAL OF FUNDS DERIVED FROM QUALIFIED TOLL PROJECTS, TO PROVIDE WHEN TOLLS COLLECTED FROM QUALIFIED TOLL PROJECTS SHALL CEASE, AND TO DEFINE THE TERM "QUALIFIED TOLL PROJECT"; AND TO AMEND SECTION 57-3-200, RELATING TO THE DEPARTMENT OF TRANSPORTATION'S AUTHORITY TO ENTER INTO AGREEMENTS TO FINANCE, CONSTRUCT, AND MAINTAIN HIGHWAYS, ROADS, STREETS, AND BRIDGES, SO AS TO PROVIDE GUIDELINES FOR THE DEPARTMENT'S EXPENDITURE OF FUNDS ON QUALIFIED TOLL PROJECTS AND THE SETTING OF TOLLS ALONG TRANSPORTATION FACILITIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12-28-2920 of the 1976 Code is amended to read:

"Section 12-28-2920. (A) The department shall review projects for the possibility of constructing toll roads to defray the cost of these projects pursuant to the authority granted the department in Section 57-5-1330. No project may be funded by means of imposing a toll on the users of the project unless in conjunction with federal funds authorized for use on toll roads it is determined to be substantially feasible by the department. The funds derived from tolls must be:

(1) credited to the State Highway Fund or retained and applied by the entity or entities developing, or, in the case of a Qualified Toll Project, operating the toll road pursuant to an agreement authorized under Section 57-3-200 for the purpose of funding:

(a) the cost of construction, financing, operation, and maintenance of the toll project; or

(b) in the case of a Qualified Toll Project, acquisition, cost of construction, equipping, improvement, financing, refinancing, operation, and maintenance of the toll project; or

(2) used to service bonded indebtedness for highway transportation purposes incurred pursuant to paragraph 9, Section 13, Article X of the South Carolina Constitution.

(B) Upon repayment of the cost of construction, financing, toll charges shall cease, or in the case of a Qualified Toll Project upon the repayment of the cost of acquisition, construction, equipping, improvement, financing, refinancing, operation, maintenance, and satisfaction of the obligations of all of the parties to an agreement authorized under Section 57-3-200, toll charges on such qualified toll projects shall cease.

(C) For purposes of this section and Section 57-3-200, a 'Qualified Toll Project' is a toll project involving an agreement between the department and another entity or entities on which tolls were being collected before January 1, 2008. The department has the authority to assign, amend, and extend the terms of a Qualified Toll Project agreement. However, an amendment or extension does not create a pecuniary obligation on the part of the department, the State of South Carolina, its agencies or subdivisions, or its taxpayers to pay any debt associated with the Qualified Toll Project."

SECTION 2. Section 57-3-200 of the 1976 Code is amended to read:

"Section 57-3-200. (A) From the funds appropriated to the Department of Transportation and from any other sources which may be available to the department, the Department of Transportation may expend ~~such funds as it deems~~ necessary to enter into partnership agreements with political subdivisions including authorized transportation authorities, and private entities to finance, by tolls and other financing methods;

(1) the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets and bridges in this State;

(2) in the case of a Qualified Toll Project, as defined in Section 12-28-2920, the cost of acquiring, constructing, equipping, improving, maintaining, financing, refinancing, and operating highways, roads, streets, and bridges in this State.

(B) The department shall establish the initial toll to be charged to the traveling public for the use of the transportation facility and any revisions to those tolls after providing public notice and a hearing. However, in the case of a Qualified Toll Project, the department, after setting the initial toll rate or rates, may delegate to the political subdivision, transportation authority, or private entity the power to revise the toll for inflation in an amount not to exceed the increase in the Consumer Price Index.

(C) The provisions of this section must not be construed to confer upon the Department of Transportation or political subdivisions any power to finance by toll or other means the acquisition, construction, equipping, maintenance or operation which the Department of Transportation or other political subdivisions do not possess under other provisions of this code."

SECTION 3. This act takes effect upon approval by the Governor.

---XX---

This web page was last updated on February 11, 2009 at 3:56 PM

# **REPORT OF THE ECONOMIC DEVELOPMENT, CAPITAL IMPROVEMENT & OTHER TAXES SUBCOMMITTEE**

(Herbkersman, Bingham, Cobb-Hunter, Ott & JR Smith - Staff Contact: Marc Aquino)

---

---

## **HOUSE BILL 3730**

---

---

H. 3730 -- Rep. Cooper: A JOINT RESOLUTION TO PROVIDE THAT ALL FUNDS RECEIVED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT) FOR THE CLEAN WATER STATE REVOLVING FUND AND DRINKING WATER STATE REVOLVING FUND MAY BE RECEIVED AND EXPENDED PURSUANT TO PROVISIONS OF THE RECOVERY ACT FOR SO LONG AS MONIES ARE AVAILABLE UNDER THE RECOVERY ACT.

***Summary of Bill:*** Allows that all ARRA (Stimulus) Funds for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund may be received and expended. They must be spent according to provisions in the Recovery Act for as long as funds are made available.

***Introduced:*** 3/24/2009

***Received by Ways and Means:*** 3/24/2009

***Estimated Fiscal Impact:*** PENDING

***Subcommittee Recommendation:*** Favorable

***Full Committee Recommendation:*** Pending

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

**A JOINT RESOLUTION**

TO PROVIDE THAT ALL FUNDS RECEIVED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT) FOR THE CLEAN WATER STATE REVOLVING FUND AND DRINKING WATER STATE REVOLVING FUND MAY BE RECEIVED AND EXPENDED PURSUANT TO PROVISIONS OF THE RECOVERY ACT FOR SO LONG AS MONIES ARE AVAILABLE UNDER THE RECOVERY ACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Notwithstanding the provisions of Sections 48-5-50(C) and 48-5-55(C) of the 1976 Code concerning the use of funds in the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF), all funds received under the American Recovery and Reinvestment Act of 2009 (Recovery Act) for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund may be received and expended pursuant to provisions of the Recovery Act for so long as monies are available under the recovery act.

SECTION 2. This joint resolution takes effect upon approval by the Governor.

----XX----

# REPORT OF THE PROPERTY TAX SUBCOMMITTEE

(Merrill, Clyburn, JH Neal, Rice & Young - Staff Contact: Paul Patrick)

---

## HOUSE BILL 3018

---

H. 3018 -- Rep. E.H. Pitts: A BILL TO AMEND SECTION 12-37-220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO EXEMPT FROM PROPERTY TAX THE VALUE OF IMPROVEMENTS TO REAL PROPERTY CONSISTING OF A NEWLY CONSTRUCTED DETACHED SINGLE FAMILY HOME THROUGH THE EARLIER OF THE PROPERTY TAX IN WHICH THE HOME IS OCCUPIED, OR THE SECOND PROPERTY TAX YEAR ENDING DECEMBER THIRTY-FIRST AFTER THE HOME IS COMPLETED AND A CERTIFICATE FOR OCCUPANCY ISSUED THEREON IF REQUIRED.

***Summary of Bill:***

This bill exempts newly constructed detached single family homes from being taxed on the improvements through the earlier of either the year the home is occupied or the second tax year after the home is completed and a Certificate for Occupancy is issued.

***Introduced:*** 1/13/2009

***Received by Ways and Means:*** 1/13/2009

***Estimated Fiscal Impact:***

The BEA estimates this exemption will be applied to 500 homes in a typical year. Multiplying these homes by \$171,227, the average value of building permits issued in 2007, times a six percent assessment ratio times an average millage rate of 300 yields \$1,541,043 of local property tax revenue that will be exempted.

***Subcommittee Recommendation:***

Favorable

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

The bill is to provide relief for home builders who are currently being taxed on the improvements even if the home is not occupied and is awaiting sale.

# **South Carolina Board of Economic Advisors**

## **Statement of Estimated State Revenue Impact**

---

Date: March 20, 2009

Bill Number: H.B. 3018

Authors: E.H. Pitts, Huggins, Gunn and Bales

Committee Requesting Impact: House Ways and Means

---

### **Bill Summary**

A bill to amend Section 12-37-220, as amended, Code of Laws of South Carolina, 1976, relating to property tax exemptions, so as to exempt from property tax the value of improvements to real property consisting of a newly constructed detached single family home through the earlier of the property tax in which the home is occupied, or the second property tax year ending December thirty-first after the home is completed and a certificate for occupancy issued thereon if required.

### **REVENUE IMPACT <sup>1/</sup>**

This bill is not expected to impact State revenues. Local property tax revenues would be reduced by \$1,541,043 in FY 2009-10.

### **Explanation**

This bill adds a new property tax exemption equal to one hundred percent of the value of an improvement to real property consisting of a newly constructed detached single family home. The exemption is good through the earlier of the property tax year in which the home is first occupied or the property tax year ending the second December thirty first after the home is completed and a certificate of occupancy is issued. We estimate this exemption will be applied to 500 homes in a typical year. Multiplying these homes by \$171,227, the average value of building permits issued in 2007, times a six percent assessment ratio times an average millage rate of 300 yields \$1,541,043 of local property tax revenue that will be exempted.

/s/ WILLIAM C. GILLESPIE, Ph.D.

William C. Gillespie, Ph.D.  
Chief Economist

Analyst: Gibson

<sup>1/</sup> This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

## H. 3018

### STATUS INFORMATION

#### General Bill

Sponsors: Reps. E.H. Pitts, Huggins, Gunn, Bales, Limehouse, Barfield, Hardwick, Hearn, Edge, Gambrell, Thompson, Bowen, Harrison, Umphlett, Sandifer, Herbkersman, G.M. Smith, Lowe, Vick and H.B. Brown

Document Path: I:\council\bill\swb\5623htc09.docx

Introduced in the House on January 13, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Property tax exemptions

### HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/9/2008	House	Prefiled
12/9/2008	House	Referred to Committee on <b>Ways and Means</b>
1/13/2009	House	Introduced and read first time HJ-23
1/13/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-24
1/28/2009	House	Member(s) request name added as sponsor: Huggins
2/24/2009	House	Member(s) request name added as sponsor: Gunn
2/25/2009	House	Member(s) request name added as sponsor: Bales
3/10/2009	House	Member(s) request name added as sponsor: Limehouse, Barfield, Hardwick, Hearn, Edge, Gambrell, Thompson, Bowen, Harrison, Umphlett, Sandifer, Herbkersman, G.M.Smith, Lowe, Vick, H.B.Brown

View the latest [legislative information](#) at the LPITS web site

### VERSIONS OF THIS BILL

12/9/2008

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

**A BILL**

TO AMEND SECTION 12-37-220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO EXEMPT FROM PROPERTY TAX THE VALUE OF IMPROVEMENTS TO REAL PROPERTY CONSISTING OF A NEWLY CONSTRUCTED DETACHED SINGLE FAMILY HOME THROUGH THE EARLIER OF THE PROPERTY TAX IN WHICH THE HOME IS OCCUPIED, OR THE SECOND PROPERTY TAX YEAR ENDING DECEMBER THIRTY-FIRST AFTER THE HOME IS COMPLETED AND A CERTIFICATE FOR OCCUPANCY ISSUED THEREON IF REQUIRED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12-37-220(B) of the 1976 Code is amended by adding a new item at the end appropriately numbered to read:

"( ) one hundred percent of the value of an improvement to real property consisting of a newly constructed detached single family home through the earlier of:

(a) the property tax year in which the home is first occupied; or

(b) the property tax ending the second December thirty first after the home is completed and a certificate of occupancy, if required, is issued thereon."

SECTION 2. This act takes effect upon approval by the Governor and applies for single family homes completed and, if required, a certificate of occupancy issued thereon after 2007.

----XX----

This web page was last updated on March 10, 2009 at 10:34 PM



# **REPORT OF THE PROPERTY TAX SUBCOMMITTEE**

(Merrill, Clyburn, JH Neal, Rice, and Young - Staff Contact: Paul Patrick)

---

## **HOUSE BILL 3272**

---

H. 3272 -- Reps. Cooper and Merrill: A BILL TO AMEND SECTION 12-37-3140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DETERMINING THE FAIR MARKET VALUE OF REAL PROPERTY FOR PURPOSES OF THE SOUTH CAROLINA REAL PROPERTY VALUATION REFORM ACT, SO AS TO POSTPONE THE IMPLEMENTATION OF THE TRANSFER VALUE OF A PARCEL OF REAL PROPERTY UNIMPROVED SINCE THE LAST COUNTYWIDE REASSESSMENT PROGRAM UNTIL THE TIME OF IMPLEMENTATION OF THE NEXT COUNTYWIDE REASSESSMENT PROGRAM AND TO REQUIRE THE FIFTEEN PERCENT LIMIT ON INCREASES IN VALUE TO BE CALCULATED SEPARATELY ON LAND AND IMPROVEMENTS; TO AMEND SECTION 12-37-3150, AS AMENDED, RELATING TO THE TIME AN ASSESSABLE TRANSFER OF INTEREST OCCURS, SO AS TO REVISE THE PENALTY FOR FAILURE TO PROVIDE NOTICE OR FAILURE TO PROVIDE ACCURATE NOTICE TO THE ASSESSING AUTHORITY OF BUSINESS ENTITY TRANSFERS; TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO THE CLASSIFICATION AND VALUATION OF PROPERTY FOR PURPOSES OF THE PROPERTY TAX, SO AS TO PROVIDE RESIDENTIAL REAL PROPERTY HELD IN TRUST DOES NOT QUALIFY AS A LEGAL RESIDENCE UNLESS A NAMED INDIVIDUAL BENEFICIARY UNDER THE TRUST OCCUPIES THE RESIDENCE AS THAT NAMED BENEFICIARY'S LEGAL RESIDENCE AND THAT INDIVIDUAL BENEFICIARY'S NAME APPEARS ON THE DEED TO THE RESIDENCE AND REQUIRE SOCIAL SECURITY NUMBERS OF APPLICANTS FOR THE LEGAL RESIDENCE ASSESSMENT RATIO; AND TO AMEND SECTION 40-60-35, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR ASSESSORS, SO AS TO REVISE THE REQUIREMENT.

***Summary of Bill:***

H.3272 has been fully amended with language relating to the following:

- 1) Create an exemption for property that is sold for a value higher than its current assessed value from undergoing the ATI process – therefore eliminating any increase in the assessed value at the time of transfer.
- 2) Maintain the 15% cap on assessment increases during the county-wide reassessment.
- 3) Allow for all new construction to originally be assessed at FMV.
- 4) Allow for an appeal on the current assessed value if the new sale value is lower.

- 5) Make the new language retroactive – so that property sold in 2007, 2008, and 2009 that were impacted by the ATI system will have their assessed values recalculated to show the new system.
- 6) Not allow for refunds on property previously impacted by the new system.

***Introduced:*** 1/14/2009

***Received by Ways and Means:*** 1/14/2009

***Estimated Fiscal Impact:***

This bill would change the incidence of local property taxes by reducing the property taxes collected from real property that undergoes an assessable transfer of interest by **\$52 million** in a typical year.

***Subcommittee Recommendation:***

Favorable with Amendment(s)

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

None

STATE OF SOUTH CAROLINA  
**State Budget and Control Board**  
OFFICE OF RESEARCH & STATISTICS



MARK SANFORD, CHAIRMAN  
GOVERNOR

CONVERSE A. CHELLIS III, CPA  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

DANIEL T. "DAN" COOPER  
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO  
EXECUTIVE DIRECTOR

REMBERT C. DENNIS BUILDING  
1000 ASSEMBLY STREET, SUITE 425  
COLUMBIA, SOUTH CAROLINA 29201

Bobby Bowers  
DIRECTOR

March 13, 2009

The Honorable Daniel T. Cooper  
Chairman, House Ways and Means Committee  
525 Blatt Building  
Columbia, SC 29211

Dear Chairman Cooper:

This is in response to a request made on your behalf by Emily Heatwole for the fiscal impact of a proposed amendment to House Bill 3272 with the document name 20169HTC09.docx dated March 2, 2009. This amendment changes how point of sale valuations are handled when an assessable transfer of interest occurs. In most instances, this amendment does not allow the value of property previously taxed to increase when an assessable transfer of interest occurs by exempting the amount of increase in value attributable to the sale. In a typical year, we project exempting the increase in value of properties being sold and keeping these properties on the tax rolls at the value before the sale will reduce property tax collections Statewide by an estimated \$52 million.

If you have any questions, I will be happy to answer them.

Sincerely,

A handwritten signature in cursive script that reads "William Gillespie".

William C. Gillespie, Ph. D.

WCG/cgg

ECONOMIC RESEARCH  
WILLIAM GILLESPIE  
(803) 734-3805

GEODETTIC SURVEY  
5 GEOLOGY ROAD  
COLUMBIA, S.C. 29210  
LEWIS LAPINE  
(803) 896-7700

ADMINISTRATION MANAGER  
DIANE PORTER  
(803) 734-3802

HEALTH & DEMOGRAPHICS  
STATISTICS  
1919 BLANDING STREET  
COLUMBIA, S.C. 29201  
W. DAVID PATTERSON, PH.D.  
(803) 898-9941

**South Carolina General Assembly**  
118th Session, 2009-2010

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

**H. 3272**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Cooper, Merrill, Erickson, Herbkersman, Chalk, Duncan, Long, Sottile, Daning, Lowe, Bowen and Harrison

Document Path: l:\council\bills\gjk\20050sd09.docx

Companion/Similar bill(s): 3007, 3130

Introduced in the House on January 14, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Real property valuation

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/14/2009	House	Introduced and read first time HJ-17
1/14/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-18
2/4/2009	House	Member(s) request name added as sponsor: Erickson, Herbkersman, Chalk, Duncan, Long, Sottile, Daning, Lowe, Bowen
2/5/2009	House	Member(s) request name added as sponsor: Harrison

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

1/14/2009

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

**A BILL**

TO AMEND SECTION 12-37-3140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DETERMINING THE FAIR MARKET VALUE OF REAL PROPERTY FOR PURPOSES OF THE SOUTH CAROLINA REAL PROPERTY VALUATION REFORM ACT, SO AS TO POSTPONE THE IMPLEMENTATION OF THE TRANSFER VALUE OF A PARCEL OF REAL PROPERTY UNIMPROVED SINCE THE LAST COUNTYWIDE REASSESSMENT PROGRAM UNTIL THE TIME OF IMPLEMENTATION OF THE NEXT COUNTYWIDE REASSESSMENT PROGRAM AND TO REQUIRE THE FIFTEEN PERCENT LIMIT ON INCREASES IN VALUE TO BE CALCULATED SEPARATELY ON LAND AND IMPROVEMENTS; TO AMEND SECTION 12-37-3150, AS AMENDED, RELATING TO THE TIME AN ASSESSABLE TRANSFER OF INTEREST OCCURS, SO AS TO REVISE THE PENALTY FOR FAILURE TO PROVIDE NOTICE OR FAILURE TO PROVIDE ACCURATE NOTICE TO THE ASSESSING AUTHORITY OF BUSINESS ENTITY TRANSFERS; TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO THE CLASSIFICATION AND VALUATION OF PROPERTY FOR PURPOSES OF THE PROPERTY TAX, SO AS TO PROVIDE RESIDENTIAL REAL PROPERTY HELD IN TRUST DOES NOT QUALIFY AS A LEGAL RESIDENCE UNLESS A NAMED INDIVIDUAL BENEFICIARY UNDER THE TRUST OCCUPIES THE RESIDENCE AS THAT NAMED BENEFICIARY'S LEGAL RESIDENCE AND THAT INDIVIDUAL BENEFICIARY'S NAME APPEARS ON THE DEED TO THE RESIDENCE AND REQUIRE SOCIAL SECURITY NUMBERS OF APPLICANTS FOR THE LEGAL RESIDENCE ASSESSMENT RATIO; AND TO AMEND SECTION 40-60-35, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR ASSESSORS, SO AS TO REVISE THE REQUIREMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12-37-3140 of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

"Section 12-37-3140. (A)(1) For property tax years beginning after 2006, the fair market value of real property is its market value applicable for the later of:

- (a) the base year, as defined in subsection (C) of this section;
  - (b) subject to the provisions of item (3) of this subsection, December thirty-first of the year in which an assessable transfer of interest has occurred;
  - (c) as determined on appeal; or
  - (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.
- (2) To the fair market value of real property as determined at the time provided in item (1) of this subsection, there must be added the fair market value of subsequent improvements and additions to the property.
- (3) If a parcel of real property which has had no further improvement since the most recent countywide reassessment program was implemented undergoes an assessable transfer of interest, the implementation of the transfer value as determined pursuant to item (1)(b) of this subsection is postponed until the property tax year of implementation of the next countywide assessment program and that transfer value is the value to which the limit on increases in fair market value provided pursuant to subsection (B) of this section applies.

(B) Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to Section 12-43-217 or as implemented pursuant to subsection (A)(3) of this section is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated separately on land and improvements. However, this limit does not apply to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax, nor ~~do they~~ does the limit apply to the fair market value of real property when an assessable transfer of

interest occurred in the year that the transfer value is first subject to tax.

(C) For purposes of determining a 'base year' fair market value pursuant to this section, the fair market value of real property is its appraised value applicable for property tax year 2007.

(D) Real property valued by the unit valuation concept is excluded from the limits provided pursuant to subsection (B) of this section.

(E) Value attributable to additions and improvements, and changes in value resulting from assessable transfers of interest occurring in a property tax year are first subject to property tax in the following tax year except as provided pursuant to subsection (A)(3) of this section and Section 12-37-670(B)."

SECTION 2. Section 12-37-3150(A)(8) of the 1976 Code, as added by Act 388 of 2006, is amended to read:

"(8) a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty-five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. The corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty-five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item. Failure to provide this notice or failure to provide accurate information on this notice subjects the property to a civil penalty of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply;"

SECTION 3. A. Section 12-43-220(c) of the 1976 Code, as last amended by Act 145 of 2005, is further amended by adding at the end to read:

"(8) Notwithstanding the provisions of subitem (1) of this item, residential real property held in trust does not qualify as a legal residence for purposes of this item unless a named individual beneficiary under the trust occupies the residence as that named beneficiary's legal residence and that individual beneficiary's name appears on the deed to the residential property.

(9) An application for the assessment ratio allowed by this item is not valid unless the application contains the social security number(s) of the owner-occupant(s) making the application or on whose behalf the application is made."

B. Subitems (8) and (9) of Section 12-43-220(c) of the 1976 Code, as added by subsection A of this section apply for first applications for the four percent assessment ratio for legal residence made for property tax years beginning after 2008.

SECTION 4. Section 40-60-35(A)(2) of the 1976 Code, as added by Act 257 of 2006, is amended to read:

"(2) For renewal of an active license or certification, assessors and other staff responsible for the assessment of property for ad valorem taxation purposes shall receive ~~nine~~ seven hours of instruction each year in the laws applicable to assessment for ad valorem taxation, methods of valuing property, administration of the assessor's office and records of the assessor's office, and other functions related to the assessor's office. This instruction shall be received from the Department of Revenue or other providers or courses approved by the Department of ~~Revenue~~ Labor, Licensing and Regulation. This instruction shall satisfy ~~eighteen~~ fourteen of the twenty-eight classroom hours required for renewal."

SECTION 5. Except as otherwise stated, this act takes effect upon approval by the Governor.

----XX----

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

CONE/KUBALA  
MARCH 2, 2009

---

CLERK OF THE HOUSE

---

THE PROPOSES THE FOLLOWING AMENDMENT No. TO H.  
3272

(DOCUME~1\PAULPA~1\LOCALS~1\TEMP\GWVIEWE  
R\20169HTC09):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING ALL AFTER THE ENACTING WORDS AND  
INSERTING:**

**/ SECTION 1. ARTICLE 25, CHAPTER 37,  
TITLE 12 OF THE 1976 CODE IS AMENDED BY  
ADDING:**

**“SECTION 12-37-3135. (A)(1) WHEN A  
PARCEL OF REAL PROPERTY AND IMPROVEMENTS**

**THEREON PREVIOUSLY SUBJECT TO PROPERTY TAX UNDERGOES AN ASSESSABLE TRANSFER OF INTEREST AND THE VALUE OF THE PARCEL AS DETERMINED AT THE TIME OF THE ASSESSABLE TRANSFER OF INTEREST IS GREATER THAN THE VALUE OF THE PARCEL USED IN THE PROPERTY TAX ASSESSMENT ON THE PARCEL FOR THE MOST RECENT COMPLETED PROPERTY TAX YEAR, THERE IS ALLOWED AN EXEMPTION OF AN AMOUNT OF THE FAIR MARKET VALUE OF THE PARCEL SUFFICIENT TO ELIMINATE ANY INCREASE IN THE VALUE OF THE PARCEL AS DETERMINED IN THE APPRAISAL AT THE TIME OF THE ASSESSABLE TRANSFER OF INTEREST OVER THE VALUE USED IN THE PROPERTY TAX ASSESSMENT ON THE PARCEL FOR THE MOST RECENTLY COMPLETED PROPERTY TAX YEAR. FOR PURPOSES OF THIS ITEM, PROPERTY TAX ASSESSMENT HAS THE MEANING PROVIDED IN SECTION 12-60-30(19).**

**(2)THE VALUE TO WHICH THE CAP ON INCREASES IN FAIR MARKET VALUE IMPOSED**



**PURSUANT TO SECTION 12-37-3140(B) APPLIES IS THE VALUE AS IT MAY BE REDUCED BY THE EXEMPTION ALLOWED PURSUANT TO ITEM (1) OF THIS SUBSECTION.**

**(3) THE EXEMPTION ALLOWED BY ITEM (A) OF THIS SUBSECTION DOES NOT APPLY TO THE FAIR MARKET VALUE OF A PARCEL OF REAL PROPERTY WHEN THAT SEPARATE PARCEL HAS NOT BEEN PREVIOUSLY TAXED NOR DOES IT APPLY TO THE FAIR MARKET VALUE OF ADDITIONS OR IMPROVEMENTS MADE TO A PARCEL OF REAL PROPERTY WHEN THOSE ADDITIONS OR IMPROVEMENTS HAVE NOT PREVIOUSLY BEEN TAXED.**

**(B) WHEN A PARCEL RECEIVING THE EXEMPTION ALLOWED BY SUBSECTION (A)(1) OF THIS SECTION THEREAFTER UNDERGOES ASSESSABLE TRANSFERS OF INTEREST, THAT PARCEL IS NOT SUBJECT TO APPRAISAL AS REQUIRED PURSUANT TO SECTION 12-37-3130(4) UNLESS THE TAXPAYER NOTIFIES THE PROPERTY TAX ASSESSOR IN WRITING THAT THE PARCEL**

**HAS UNDERGONE AN ASSESSABLE TRANSFER OF INTEREST IN THE CURRENT PROPERTY TAX YEAR. UPON CONFIRMATION THAT AN ASSESSABLE TRANSFER OF INTEREST HAS OCCURRED, THE PROPERTY TAX ASSESSOR SHALL DETERMINE THE FAIR MARKET VALUE OF PARCEL AT THE TIME OF THE ASSESSABLE TRANSFER OF VALUE AND THAT VALUE SHALL APPLY AS PROVIDED IN SECTION 12-37-3140(E).**

**(2) THE OWNER OF A PARCEL RECEIVING THE EXEMPTION ALLOWED BY SUBSECTION (A) OF THIS SECTION IS NOT SUBJECT TO THE OWNERSHIP REPORTING REQUIREMENTS OF THIS ARTICLE EXCEPT AT THE TIME OF THE NOTICE TO THE PROPERTY TAX ASSESSOR.”**

**SECTION 2. SECTION 12-37-3140(A)(1)(B) OF THE 1976 CODE, AS LAST AMENDED BY ACT 57 OF 2007, IS FURTHER AMENDED TO READ:**

**“(B) SUBJECT TO ANY EXEMPTION ALLOWED PURSUANT TO SECTION 12-37-3135(A),**

**DECEMBER THIRTY-FIRST OF THE YEAR IN WHICH AN ASSESSABLE TRANSFER OF INTEREST HAS OCCURRED;”**

**SECTION 3. SECTION 12-60-30(19) OF THE 1976 CODE IS AMENDED TO READ:**

**“(19) ‘PROPERTY TAX ASSESSMENT’ MEANS ANY VALUATION OR DETERMINATION OF PROPERTY VALUE FOR ANNUAL PROPERTY TAX PURPOSES ARRIVED AT BY MULTIPLYING THE FAIR MARKET VALUE, FAIR MARKET VALUE AS LIMITED PURSUANT TO SECTION 12-37-3140(B), OR SPECIAL USE VALUE OF THE PROPERTY BY THE APPROPRIATE ASSESSMENT RATIO FOR THE TAXABLE PROPERTY’S CLASSIFICATION.”**

**SECTION 4. THIS ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR AND APPLIES FOR PROPERTY TAX YEARS BEGINNING AFTER 2006. PROPERTY TAX ASSESSORS SHALL CONFORM THE VALUES OF PARCELS OF REAL PROPERTY WHICH**

**UNDERWENT AN ASSESSABLE TRANSFER OF INTEREST IN 2007 AND 2008, AND IN 2009 BEFORE THE EFFECTIVE DATE OF THIS ACT, TO THE VALUE OF THESE PARCELS AS THAT VALUE MAY HAVE BEEN ADJUSTED TO REFLECT THE PROVISIONS OF SECTION 12-37-3135 OF THE 1976 CODE, AS ADDED BY THIS ACT. NO REFUND IS ALLOWED ON ACCOUNT OF VALUES ADJUSTED AS PROVIDED IN THIS SECTION. /**

**RENUMBER SECTIONS TO CONFORM.  
AMEND TITLE TO CONFORM.**

# **REPORT OF THE BUDGET AND FINANCE SUBCOMMITTEE**

(Cooper, Bingham, R. Smith, White, A. Young – Staff Contact: Beverly Smith)

---

---

## **HOUSE BILL 3365**

---

---

H. 3365 -- Rep. Cooper: A BILL TO ENACT THE "HIGHER EDUCATION EFFICIENCY AND ADMINISTRATIVE POLICIES ACT".

***Summary of Bill:***

Provides regulatory flexibility for higher education institutions in the areas of human resources, capital expenditures and procurement, finance and administration. The legislation allows the authority for setting human resource policies to reside with the Board of Trustees at the individual higher education institutions. The bill maintains employees rights under the state grievance procedures, eligibility for state health benefits and retirement, and maintains eligibility and funding for state mandated pay raises. The capital improvement process is revised to allow final review authority to reside with the Joint Bond Review Committee and approval authority with the institutional boards. It expands the applicability of ground lease agreements to all public higher education institutions, allowing these agreements to be used for public-private partnerships. Further, it amends the Higher Education Revenue Bond Act to require the issuance of revenue bonds to be favorably reviewed by the Joint Bond Review Committee and final approval for issuance by the each individual institutional boards. It allows the creation of self supporting enterprises, permitting higher education institutions to retain the revenues and interest from these enterprises, if established after July 1, 2009. It amends the individual revenue bond statutes applicable to higher education institutions to allow final review of these revenue bonds to reside with the Joint Bond Review Committee and final approval by the institutional boards. It revises statutes pertaining to various procurement thresholds. Finally, it provides higher education institutions additional flexibility to grant tuition waivers and scholarships derived from state or public funds of up to 8%. (Please see attached detailed summary.)

***Introduced:*** 1/28/2009

***Received by Ways and Means:*** 1/28/2009

***Estimated Fiscal Impact:***

Pending

***Subcommittee Recommendation:***

Favorable with Amendment(s)

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

This bill was first heard on Feb 5<sup>th</sup>, but was carried over due to the complexity of the amendment offered.

THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

**South Carolina General Assembly**  
118th Session, 2009-2010

**H. 3365**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Cooper, T.R. Young and J.R. Smith

Document Path: I:\council\bills\bbm\9124htc09.docx

Introduced in the House on January 28, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Higher Education Efficiency and Administrative Policies Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/28/2009	House	Introduced and read first time HJ-14
1/28/2009	House	Referred to Committee on <b>Ways and Means</b> HJ-14
2/10/2009	House	Member(s) request name added as sponsor: T.R.Young
2/12/2009	House	Member(s) request name added as sponsor: J.R.Smith

View the latest [legislative information](#) at the LPITS web site

**VERSIONS OF THIS BILL**

1/28/2009

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**A BILL**

TO ENACT THE "HIGHER EDUCATION EFFICIENCY AND  
ADMINISTRATIVE POLICIES ACT".

Be it enacted by the General Assembly of the State of South  
Carolina:

SECTION 1. This act may be cited as the "Higher Education  
Efficiency and Administrative Policies Act".

SECTION 2. This act takes effect upon approval by the Governor.

---XX---

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

DRAFFIN/KUBALA  
MARCH 18, 2009

---

CLERK OF THE HOUSE

---

WAYS AND MEANS COMMITTEE PROPOSES THE FOLLOWING  
AMENDMENT No. TO H. 3365  
(COUNCIL\GJK\20210SD09):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING ALL AFTER THE ENACTING WORDS AND  
INSERTING:W**

**/ PART I**

**CITATION**

**SECTION 1. THIS ACT IS KNOWN AND MAY BE  
CITED AS THE “SOUTH CAROLINA HIGHER**



**EDUCATION EFFICIENCY AND ADMINISTRATIVE  
POLICIES ACT OF 2009”.**

**PART II**

**HUMAN RESOURCE REFORMS**

**SECTION 2. CHAPTER 101, TITLE 59 OF THE  
1976 CODE IS AMENDED BY ADDING:**

**“ARTICLE 5**

**HUMAN RESOURCES AT A PUBLIC INSTITUTION  
OF HIGHER LEARNING**

**SECTION 59-101-1010. (A) AS USED IN THIS  
ARTICLE, ‘PUBLIC INSTITUTION OF HIGHER  
LEARNING’, OR ‘INSTITUTION’ MEANS A FOUR-  
YEAR AND GRADUATE LEVEL PUBLIC  
INSTITUTION OF HIGHER LEARNING IN THIS  
STATE NOT INCLUDING TECHNICAL COLLEGES.**

**(B) AS USED IN THIS ARTICLE ‘INSTITUTIONAL BOARD’ MEANS THE GOVERNING BODY OF AN INSTITUTION OF HIGHER LEARNING AS DEFINED IN SECTION 59-101-1010.**

**SECTION 59-101-1020. (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE GOVERNING BODY OF EACH PUBLIC INSTITUTION OF HIGHER LEARNING HAS THE SOLE RESPONSIBILITY OF ESTABLISHING AND IMPLEMENTING HUMAN RESOURCE POLICIES AND PROCEDURES FOR THOSE EMPLOYEES OF THE INSTITUTION WHO, BUT FOR THE PROVISIONS OF SECTIONS 8-11-260 AND 8-11-270, WOULD BE SUBJECT TO THE PROVISIONS OF ARTICLE 1 AND ARTICLE 3, CHAPTER 11 OF TITLE 8. THESE POLICIES INCLUDE, BUT ARE NOT LIMITED TO, PROMOTION, HIRING AND TERMINATION, JOB DESCRIPTIONS, COMPENSATION, LEAVE, HOURS AND CONDITIONS OF EMPLOYMENT, FURLOUGHS, AND REDUCTIONS IN FORCE.**

**(B) INSTITUTION EMPLOYEES AFFECTED BY THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, WHERE NOT EXEMPT PURSUANT TO SECTION 8-17-370 ARE COVERED BY THE PROVISIONS OF ARTICLE 5, CHAPTER 17, OF TITLE 8, THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT.**

**(C) INSTITUTIONS OF HIGHER LEARNING IMPLEMENTING HUMAN RESOURCE POLICIES AND PROCEDURES AS PERMITTED IN SUBSECTION (A) SHALL FIRST PROVIDE THEM TO THE STATE OFFICE OF HUMAN RESOURCES FOR REVIEW AND COMMENT.**

**(D) INSTITUTIONS MUST TAKE ALL ACTIONS NECESSARY TO ENSURE COMPLIANCE WITH SUBSECTION (9) OF SECTION 8-11-230.**

**SECTION 59-101-1030. NOTHING IN THIS ARTICLE MAY BE CONSTRUED AS CHANGING OR RESTRICTING THE ACCESS OF AN INSTITUTION'S EMPLOYEES TO COVERAGE UNDER THE STATE HEALTH INSURANCE PLAN AND OTHER INSURANCE COVERAGE PROVIDED THROUGH THE OFFICE OF INSURANCE SERVICES OF THE STATE BUDGET AND CONTROL BOARD WHEN THESE EMPLOYEES MEET THE ELIGIBILITY REQUIREMENTS OR TO MEMBERSHIP OR PARTICIPATION IN THE VARIOUS STATE-OPERATED RETIREMENT SYSTEMS OPERATED BY THE RETIREMENT SYSTEMS DIVISION OF THE STATE BUDGET AND CONTROL BOARD.**

**SECTION 59-101-1040. FOR PURPOSES OF THE DISTRIBUTION OF APPROPRIATED FUNDS FOR EMPLOYEE PAY RAISES AND EMPLOYEE BENEFITS ONLY, INSTITUTIONS ARE DEEMED TO RETAIN THE FTE'S OCCUPIED BY EMPLOYEES AFFECTED BY THE PROVISIONS OF SECTION 59-101-1010(A)."**

**SECTION 3. SECTION 8-11-260 OF THE 1976 CODE, AS LAST AMENDED BY ACT 353 OF 2008, IS FURTHER AMENDED BY ADDING A NEW ITEM AT THE END TO READ:**

**“(L)EMPLOYEES OF FOUR-YEAR AND GRADUATE LEVEL PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES. HOWEVER, THE PROVISIONS OF THIS ITEM DO NOT EXEMPT SUCH EMPLOYEES FROM THE REQUIREMENTS AND PROVISIONS OF SECTION 8-11-230(9) RELATING TO A CENTRAL PERSONNEL DATA SYSTEM OF ALL STATE EMPLOYEES.”**

### **PART III**

#### **FACILITIES AND CAPITAL EXPENDITURE REVISIONS**

**SECTION 4. A. CHAPTER 47, TITLE 2 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 2-47-53. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, AS TO ALL PROJECTS PROPOSED BY FOUR-YEAR AND GRADUATE LEVEL PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES REFERRED TO HEREIN AS INSTITUTIONS OF HIGHER LEARNING, UPON FAVORABLE REVIEW BY THE COMMITTEE, THE INSTITUTIONAL BOARD SHALL ESTABLISH FORMALLY EACH PERMANENT IMPROVEMENT PROJECT BEFORE ACTIONS WHICH IMPLEMENT THE PROJECT IN ANY WAY MAY BE UNDERTAKEN AND BEFORE EXPENDITURE OF FUNDS FOR ANY SERVICES OR FOR ANY OTHER PROJECT PURPOSE CONTRACTED FOR, DELIVERED, OR OTHERWISE PROVIDED PRIOR TO THE DATE OF THE FORMAL ACTION OF THE INSTITUTIONAL BOARD TO ESTABLISH THE PROJECT MAY BE APPROVED. HOWEVER, THESE INSTITUTIONS OF HIGHER LEARNING MAY ADVERTISE AND INTERVIEW FOR PROJECT ARCHITECTURAL AND ENGINEERING SERVICES FOR A PENDING PROJECT, AND THE ARCHITECTURAL AND ENGINEERING CONTRACT MAY BE AWARDED BEFORE A STATE PROJECT NUMBER IS ASSIGNED. AFTER THE**

COMMITTEE HAS REVIEWED THE FORM TO BE USED TO REQUEST THE ESTABLISHMENT OF PERMANENT IMPROVEMENT PROJECTS AND HAS REVIEWED THE TIME SCHEDULE FOR CONSIDERING THE REQUESTS AS PROPOSED BY THE INSTITUTION, REQUESTS FOR REVIEW OF THE PERMANENT IMPROVEMENT PROJECTS MAY BE MADE IN SUCH FORM AND AT SUCH TIMES AS THE COMMITTEE MAY REQUIRE.

(B) EXCEPT AS PROVIDED IN SUBSECTION (C)(2), A PROPOSAL TO FINANCE ALL OR ANY PART OF ANY PROJECT USING ANY FUNDS NOT PREVIOUSLY AUTHORIZED SPECIFICALLY FOR THE PERMANENT IMPROVEMENT PROJECT BY THE GENERAL ASSEMBLY OR USING ANY FUNDS NOT PREVIOUSLY APPROVED FOR THE PROJECT BY THE INSTITUTIONAL BOARD MUST BE REFERRED TO THE COMMITTEE FOR REVIEW PRIOR TO APPROVAL BY THE INSTITUTIONAL BOARD AND THE STATE BUDGET AND CONTROL BOARD, IF REQUIRED.

(C)(1) A PROPOSED REVISION OF THE SCOPE OR OF THE BUDGET OF AN ESTABLISHED PERMANENT IMPROVEMENT PROJECT DEEMED BY THE COMMITTEE TO BE SUBSTANTIAL MUST BE REVIEWED PRIOR TO ANY FINAL ACTION BY THE INSTITUTIONAL BOARD. IN MAKING THEIR DETERMINATIONS REGARDING CHANGES IN PROJECT SCOPE, THE COMMITTEE SHALL UTILIZE THE PERMANENT IMPROVEMENT PROJECT PROPOSAL AND JUSTIFICATION STATEMENTS, TOGETHER WITH SUPPORTING DOCUMENTATION, CONSIDERED AT THE TIME THE PROJECT WAS AUTHORIZED OR ESTABLISHED ORIGINALLY. EXCEPT AS PROVIDED IN SUBSECTION (C)(2), ANY PROPOSAL TO INCREASE THE BUDGET OF A PREVIOUSLY APPROVED PROJECT USING ANY FUNDS NOT PREVIOUSLY APPROVED FOR THE PROJECT BY THE INSTITUTIONAL BOARD MUST IN ALL CASES BE DEEMED TO BE A SUBSTANTIAL REVISION OF A PROJECT BUDGET WHICH MUST BE REFERRED TO THE COMMITTEE FOR REVIEW.

(2) NOTWITHSTANDING SUBSECTION (C)(1), WITH REGARD TO THESE INSTITUTIONS OF HIGHER LEARNING, A PREVIOUSLY APPROVED PERMANENT IMPROVEMENT PROJECT WHOSE TOTAL COSTS INCREASE

**NOT MORE THAN TWENTY PERCENT OF THE INITIALLY APPROVED TOTAL COSTS, BUT NOT TO EXCEED TWO MILLION DOLLARS, IS NOT REQUIRED TO HAVE THAT PROPOSAL REVIEWED BY THE COMMITTEE; EXCEPT THAT THE PROPOSAL IS SUBJECT TO STAFF LEVEL REVIEW.**

**(D)(1) FOR PURPOSES OF THIS CHAPTER, WITH REGARD TO THESE INSTITUTIONS OF HIGHER LEARNING, PERMANENT IMPROVEMENT PROJECT IS DEFINED AS ANY OF THE FOLLOWING IN WHICH, AFTER COMPLETION OF ARCHITECTURAL AND ENGINEERING AND OTHER TYPES OF PLANNING AND DESIGN WORK, THE TOTAL COST OF THE ITEM IS ONE MILLION DOLLARS OR MORE:**

**(A) ACQUISITION OF LAND;**

**(B) ACQUISITION, AS OPPOSED TO THE CONSTRUCTION, OF BUILDINGS OR OTHER STRUCTURES;**

**(C) CONSTRUCTION OF ADDITIONAL FACILITIES AND WORK ON EXISTING FACILITIES FOR ANY GIVEN PROJECT INCLUDING THEIR RENOVATION, REPAIR, MAINTENANCE, ALTERATION, OR DEMOLITION;**

**(D) CAPITAL LEASE PURCHASE OF A FACILITY ACQUISITION OR CONSTRUCTION; OR**

**(E) EQUIPMENT THAT EITHER BECOMES A PERMANENT FIXTURE OF A FACILITY OR DOES NOT BECOME PERMANENT BUT IS INCLUDED IN THE CONSTRUCTION CONTRACT SHALL BE INCLUDED AS A PART OF A PROJECT.**

**(2) ANY PERMANENT IMPROVEMENT PROJECT THAT MEETS THE ABOVE DEFINITION MUST BECOME A PROJECT, REGARDLESS OF THE SOURCE OF FUNDS. HOWEVER, AN INSTITUTION OF HIGHER LEARNING THAT HAS BEEN AUTHORIZED OR APPROPRIATED CAPITAL IMPROVEMENT BOND FUNDS, STATE INSTITUTION BOND FUNDS, CAPITAL RESERVE FUNDS OR STATE APPROPRIATED FUNDS, OR STATE INFRASTRUCTURE BOND FUNDS BY THE GENERAL ASSEMBLY FOR CAPITAL IMPROVEMENTS SHALL PROCESS A PERMANENT IMPROVEMENT PROJECT, REGARDLESS OF THE AMOUNT.**

**(E) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, ACQUISITION OF LAND UNDER SUBSECTION (D)(1)(A) AND ACQUISITION OF BUILDINGS AND OTHER STRUCTURES UNDER SUBSECTION (D)(1)(B) REGARDLESS OF COST MUST HAVE OFFICE OF STATE BUDGET STAFF APPROVAL INCLUDING A PHASE I ENVIRONMENTAL STUDY AND APPRAISAL, AND ALL PERMANENT IMPROVEMENT PROJECTS COSTING ONE MILLION DOLLARS OR MORE MUST HAVE FAVORABLE REVIEW OF THE COMMITTEE AND APPROVAL BY THE INSTITUTIONAL BOARD.**

**(F) FOR PURPOSES OF THIS CHAPTER, CLEMSON UNIVERSITY PUBLIC SERVICE ACTIVITIES (CLEMSON--PSA) AND SOUTH CAROLINA STATE UNIVERSITY PUBLIC SERVICE ACTIVITIES (SC STATE-PSA) ARE SUBJECT TO SUBSECTION (D) OF THIS SECTION AND SECTION 2-47-40(A) AND (D)."**

**B. SECTION 1-11-65(A) OF THE 1976 CODE IS AMENDED TO READ:**

**"(A) ALL TRANSACTIONS INVOLVING REAL PROPERTY, MADE FOR OR BY ANY GOVERNMENTAL BODIES, EXCLUDING POLITICAL SUBDIVISIONS OF THE STATE AND EXCLUDING A REAL PROPERTY TRANSACTION MADE FOR OR BY A FOUR-YEAR AND GRADUATE LEVEL PUBLIC INSTITUTION OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES, MUST BE APPROVED BY AND RECORDED WITH THE STATE BUDGET AND CONTROL BOARD. UPON APPROVAL OF THE TRANSACTION BY THE BUDGET AND CONTROL BOARD, THERE MUST BE RECORDED SIMULTANEOUSLY WITH THE DEED, A CERTIFICATE OF ACCEPTANCE, WHICH ACKNOWLEDGES THE BOARD'S APPROVAL OF THE TRANSACTION. THE COUNTY RECORDING AUTHORITY CANNOT ACCEPT FOR RECORDING ANY DEED NOT ACCOMPANIED BY A CERTIFICATE OF ACCEPTANCE. THE BOARD MAY EXEMPT A GOVERNMENTAL BODY FROM THE PROVISIONS OF THIS SUBSECTION."**

**SECTION 5. CHAPTER 47, TITLE 2 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 2-47-54. THE BOARDS OF TRUSTEES OF FOUR-YEAR AND GRADUATE LEVEL PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES WITH THE FAVORABLE REVIEW OF THE COMMITTEE MAY ENTER INTO ONE OR MORE GROUND LEASE AGREEMENTS WITH A PRIVATE ENTITY WHEREBY THE PRIVATE ENTITY WILL PROVIDE ALL SERVICES NECESSARY FOR THE CREATION AND OPERATION OF ON-CAMPUS INFRASTRUCTURE INCLUDING, BUT NOT LIMITED TO, FINANCING WHICH IS SUBJECT TO REVIEW AND APPROVAL OF STATE TREASURER, DESIGNING, CONSTRUCTING, MANAGING, OPERATING, MAINTAINING, AND RELATED SERVICES. UPON EXPIRATION OF THE GROUND LEASE AGREEMENT TERM, THE PRIVATE ENTITY SHALL SURRENDER UNTO THE BOARD OF TRUSTEES SUCH PREMISES WITH THE EXISTING BUILDINGS, OTHER STRUCTURES, AND IMPROVEMENTS CONSTRUCTED AND LOCATED THEREON AND THEREIN, IN THE SAME CONDITION AS WHEN THE CONSTRUCTION OF THE BUILDINGS, OTHER STRUCTURES, AND IMPROVEMENTS WERE COMPLETED, ONLY NATURAL AND NORMAL WEAR AND TEAR EXCEPTED. THE COMMITTEE MUST FIRST FAVORABLY REVIEW AND THE INSTITUTIONAL BOARD APPROVE ALL GROUND LEASE AGREEMENT TERMS AND CONDITIONS INCLUDING THE CONSIDERATION INVOLVED. THE FULL FAITH AND CREDIT OF THE STATE TOWARD THE LEASE OBLIGATIONS MUST NOT BE PLEDGED, AND ANY STATEMENT TO THE CONTRARY IS DEEMED NULL AND VOID AS A MATTER OF PUBLIC POLICY. THE PRIVATE ENTITY MAY BE A NONPROFIT ORGANIZATION. THE COMMITTEE FAVORABLE REVIEW AND INSTITUTIONAL BOARD APPROVAL REQUIRED IS INSTEAD OF OR A SUBSTITUTE FOR ANY OTHER APPROVAL REQUIRED BY ANY OTHER PROVISION OF LAW OR REGULATION IN CONNECTION WITH THE UNDERTAKING OF THE PRIVATE ENTITY AND THE SUBJECT INSTITUTION; HOWEVER, THE**



PRIVATE ENTITY AND THE SUBJECT INSTITUTION SHALL ADHERE TO FIRE, LIFE, AND SAFETY CODES AS REQUIRED BY THE OFFICE OF THE STATE ENGINEER. THIS SECTION AND THE APPROVAL REQUIRED BY THIS SECTION DOES NOT EXEMPT ANY TRANSACTION OR ENTITY FROM COMPLYING WITH CHAPTER 35, TITLE 11.

**SECTION 6. A. SECTION 2-47-30 OF THE 1976 CODE IS AMENDED TO READ:**

**“SECTION 2-47-30. THE COMMITTEE IS SPECIFICALLY CHARGED WITH, BUT NOT LIMITED TO, THE ~~FOLLOWING~~ RESPONSIBILITIES TO:**

**(1) ~~TO~~ REVIEW, PRIOR TO APPROVAL BY THE BUDGET AND CONTROL BOARD, IF REQUIRED, THE ESTABLISHMENT OF ANY PERMANENT IMPROVEMENT PROJECT AND THE SOURCE OF FUNDS FOR ~~ANY~~ SUCH A PROJECT NOT PREVIOUSLY AUTHORIZED SPECIFICALLY BY THE GENERAL ASSEMBLY;**

**(2) ~~TO~~ STUDY THE AMOUNT AND NATURE OF EXISTING GENERAL OBLIGATION AND ~~INSTITUTIONAL~~ INSTITUTION BOND OBLIGATIONS AND THE CAPABILITY OF THE STATE TO FULFILL SUCH OBLIGATIONS BASED ON CURRENT AND PROJECTED REVENUES;**

**(3) ~~TO~~ RECOMMEND PRIORITIES OF FUTURE BOND ISSUANCE BASED ON THE SOCIAL AND ECONOMIC NEEDS OF THE STATE;**

**(4) ~~TO~~ RECOMMEND PRUDENT LIMITATIONS OF BOND OBLIGATIONS RELATED TO PRESENT AND FUTURE REVENUE ESTIMATES;**

**(5) ~~TO~~ CONSULT WITH INDEPENDENT BOND COUNSEL AND OTHER NONLEGISLATIVE AUTHORITIES ON SUCH MATTERS AND WITH FISCAL OFFICIALS OF OTHER STATES TO GAIN IN-DEPTH KNOWLEDGE OF CAPITAL MANAGEMENT AND ASSIST IN THE FORMULATION OF SHORT AND LONG-TERM RECOMMENDATIONS FOR THE GENERAL ASSEMBLY;**

**(6) ~~TO~~ CARRY OUT ALL OF THE ABOVE ASSIGNED RESPONSIBILITIES IN CONSULTATION AND COOPERATION WITH THE**

**EXECUTIVE BRANCH OF GOVERNMENT AND THE BUDGET AND CONTROL BOARD; AND**

**(7) ~~TO~~ REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE GENERAL ASSEMBLY ANNUALLY OR MORE FREQUENTLY IF DEEMED ADVISABLE BY THE COMMITTEE.”**

**B. SECTION 2-47-35 OF THE 1976 CODE IS AMENDED TO READ:**

**“SECTION 2-47-35. ~~NO~~ A PROJECT AUTHORIZED IN WHOLE OR IN PART FOR CAPITAL IMPROVEMENT BOND FUNDING ~~UNDER~~ PURSUANT TO THE PROVISIONS OF ACT 1377 OF 1968, AS AMENDED, ~~MAY~~ MUST NOT BE IMPLEMENTED UNTIL FUNDS ~~CAN BE~~ ARE MADE AVAILABLE AND UNTIL THE JOINT BOND REVIEW COMMITTEE, IN CONSULTATION WITH THE BUDGET AND CONTROL BOARD, IF REQUIRED, ESTABLISHES PRIORITIES FOR THE FUNDING OF THE PROJECTS. THE JOINT BOND REVIEW COMMITTEE SHALL REPORT ITS PRIORITIES TO THE MEMBERS OF THE GENERAL ASSEMBLY WITHIN THIRTY DAYS OF THE ESTABLISHMENT OF THE FUNDING PRIORITIES.”**

**C. SECTION 2-47-40 OF THE 1976 CODE IS AMENDED TO READ:**

**“SECTION 2-47-40. (A) TO ASSIST THE STATE BUDGET AND CONTROL BOARD (THE BOARD), IF REQUIRED, AND THE JOINT BOND REVIEW COMMITTEE (THE COMMITTEE) IN CARRYING OUT THEIR RESPECTIVE RESPONSIBILITIES HEREUNDER, ~~ANY~~ AN AGENCY OR INSTITUTION REQUESTING OR RECEIVING FUNDS FROM ANY SOURCE FOR USE IN THE FINANCING OF ~~ANY~~ A PERMANENT IMPROVEMENT PROJECT, AS A MINIMUM, SHALL PROVIDE TO THE BOARD, PURSUANT TO SECTION 2-47-50 AND TO THE COMMITTEE PURSUANT TO SECTION 2-47-53, IN SUCH FORM AND AT SUCH TIMES AS THE BOARD, ~~AFTER REVIEW BY~~ OR THE COMMITTEE, MAY PRESCRIBE: (A) A COMPLETE DESCRIPTION OF THE PROPOSED PROJECT; (B) A STATEMENT OF**

JUSTIFICATION FOR THE PROPOSED PROJECT; (C) A STATEMENT OF THE PURPOSES AND INTENDED USES OF THE PROPOSED PROJECT; (D) THE ESTIMATED TOTAL COST OF THE PROPOSED PROJECT; (E) AN ESTIMATE OF THE ADDITIONAL FUTURE ANNUAL OPERATING COSTS ASSOCIATED WITH THE PROPOSED PROJECT; (F) A STATEMENT OF THE EXPECTED IMPACT OF THE PROPOSED PROJECT ON THE FIVE-YEAR OPERATING PLAN OF THE AGENCY OR INSTITUTION PROPOSING THE PROJECT; (G) A PROPOSED PLAN OF FINANCING THE PROJECT, SPECIFICALLY IDENTIFYING FUNDS PROPOSED FROM SOURCES OTHER THAN CAPITAL IMPROVEMENT BOND AUTHORIZATIONS; AND (H) THE SPECIFICATION OF THE PRIORITY OF EACH PROJECT AMONG THOSE PROPOSED.

**(B)** ALL INSTITUTIONS OF HIGHER LEARNING SHALL SUBMIT PERMANENT IMPROVEMENT PROJECT PROPOSAL AND JUSTIFICATION STATEMENTS TO THE ~~BOARD~~ COMMITTEE PURSUANT TO SECTION 2-47-53 THROUGH THE COMMISSION ON HIGHER EDUCATION WHICH SHALL FORWARD ALL SUCH STATEMENTS AND ALL SUPPORTING DOCUMENTATION RECEIVED TO THE ~~BOARD~~ COMMITTEE TOGETHER WITH ITS COMMENTS AND RECOMMENDATIONS. THE RECOMMENDATIONS OF THE COMMISSION ON HIGHER EDUCATION, AMONG OTHER THINGS, SHALL INCLUDE ALL OF THE PERMANENT IMPROVEMENT PROJECTS REQUESTED BY THE SEVERAL INSTITUTIONS LISTED IN THE ORDER OF PRIORITY DEEMED APPROPRIATE BY THE COMMISSION ON HIGHER EDUCATION WITHOUT REGARD TO THE SOURCES OF FUNDS PROPOSED FOR THE FINANCING OF THE PROJECTS REQUESTED.

**(C)** THE BOARD SHALL FORWARD A COPY OF EACH PROJECT PROPOSAL AND JUSTIFICATION STATEMENT AND SUPPORTING DOCUMENTATION RECEIVED PURSUANT TO SUBSECTION (A) TOGETHER WITH THE BOARD'S RECOMMENDATIONS ON SUCH PROJECTS TO THE COMMITTEE FOR ITS REVIEW AND ACTION. THE RECOMMENDATIONS OF THE COMMISSION ON HIGHER EDUCATION ~~SHALL BE INCLUDED IN~~

~~THE MATERIALS~~ MUST BE FORWARDED TO THE COMMITTEE BY ~~THE BOARD.~~

~~(D) NO PROVISION IN THIS SECTION OR ELSEWHERE IN THIS~~ THIS CHAPTER, ~~SHALL BE CONSTRUED TO~~ DOES NOT LIMIT IN ANY MANNER THE PREROGATIVES OF THE COMMITTEE AND THE GENERAL ASSEMBLY WITH REGARD TO RECOMMENDING OR AUTHORIZING PERMANENT IMPROVEMENT PROJECTS AND THE FUNDING ~~SUCH~~ THE PROJECTS MAY REQUIRE.”

D. SECTION 2-47-50 OF THE 1976 CODE IS AMENDED TO READ:

“SECTION 2-47-50. (A) THIS SECTION APPLIES TO ALL PROPOSED PROJECTS OTHER THAN THOSE PROPOSED FOR FOUR-YEAR AND GRADUATE LEVEL PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES, THE APPROVAL PROCESS FOR WHICH SHALL BE AS PROVIDED IN SECTION 2-47-53.

(B) THE BOARD SHALL ESTABLISH FORMALLY EACH PERMANENT IMPROVEMENT PROJECT BEFORE ACTIONS ~~OF ANY SORT~~ WHICH IMPLEMENT THE PROJECT IN ANY WAY MAY BE UNDERTAKEN AND ~~NO~~ BEFORE EXPENDITURE OF ANY FUNDS FOR ANY SERVICES OR FOR ANY OTHER PROJECT PURPOSE CONTRACTED FOR, DELIVERED, OR OTHERWISE PROVIDED PRIOR TO THE DATE OF THE FORMAL ACTION OF THE BOARD TO ESTABLISH THE PROJECT ~~SHALL~~ MAY BE APPROVED. STATE AGENCIES ~~AND INSTITUTIONS~~ MAY ADVERTISE AND INTERVIEW FOR PROJECT ARCHITECTURAL AND ENGINEERING SERVICES FOR A PENDING PROJECT SO LONG AS THE ARCHITECTURAL AND ENGINEERING CONTRACT IS NOT AWARDED UNTIL AFTER A STATE PROJECT NUMBER IS ASSIGNED. AFTER THE COMMITTEE HAS REVIEWED THE FORM TO BE USED TO REQUEST THE ESTABLISHMENT OF PERMANENT IMPROVEMENT PROJECTS AND HAS REVIEWED THE TIME SCHEDULE FOR CONSIDERING ~~SUCH~~ THE REQUESTS AS PROPOSED BY THE BOARD, REQUESTS TO ESTABLISH PERMANENT IMPROVEMENT PROJECTS ~~SHALL~~ MUST BE

MADE IN SUCH A FORM AND AT SUCH TIMES AS THE BOARD MAY REQUIRE.

~~(C) ANY~~ A PROPOSAL TO FINANCE ALL OR ANY PART OF ~~ANY~~ A PROJECT USING ~~ANY~~ FUNDS NOT PREVIOUSLY AUTHORIZED SPECIFICALLY FOR THE PROJECT BY THE GENERAL ASSEMBLY OR USING ~~ANY~~ FUNDS NOT PREVIOUSLY APPROVED FOR THE PROJECT BY THE BOARD AND REVIEWED BY THE COMMITTEE ~~SHALL~~ MUST BE REFERRED TO THE COMMITTEE FOR REVIEW PRIOR TO APPROVAL BY THE BOARD.

~~(D) ANY~~ A PROPOSED REVISION OF THE SCOPE OR OF THE BUDGET OF AN ESTABLISHED PERMANENT IMPROVEMENT PROJECT DEEMED BY THE BOARD TO BE SUBSTANTIAL ~~SHALL~~ MUST BE REFERRED TO THE COMMITTEE FOR ITS REVIEW ~~PRIOR TO~~ BEFORE ANY FINAL ACTION BY THE BOARD. IN MAKING THEIR DETERMINATIONS REGARDING CHANGES IN PROJECT SCOPE, THE BOARD AND THE COMMITTEE SHALL UTILIZE THE PERMANENT IMPROVEMENT PROJECT PROPOSAL AND JUSTIFICATION STATEMENTS, TOGETHER WITH ANY SUPPORTING DOCUMENTATION, CONSIDERED AT THE TIME THE PROJECT WAS AUTHORIZED OR ESTABLISHED ORIGINALLY. ~~ANY~~ A PROPOSAL TO INCREASE THE BUDGET OF A PREVIOUSLY APPROVED PROJECT USING ~~ANY~~ FUNDS NOT PREVIOUSLY APPROVED FOR THE PROJECT BY THE BOARD AND REVIEWED BY THE COMMITTEE ~~SHALL IN ALL CASES~~ MUST BE DEEMED IN ALL CASES TO BE A SUBSTANTIAL REVISION OF A PROJECT BUDGET ~~WHICH~~ THAT SHALL BE REFERRED TO THE COMMITTEE FOR REVIEW. THE COMMITTEE ~~SHALL~~ MUST BE ADVISED PROMPTLY OF ALL ACTIONS TAKEN BY THE BOARD WHICH APPROVE REVISIONS IN THE SCOPE OF OR THE BUDGET OF ~~ANY~~ A PREVIOUSLY ESTABLISHED PERMANENT IMPROVEMENT PROJECT NOT DEEMED SUBSTANTIAL BY THE BOARD.

~~FOR PURPOSES OF THIS CHAPTER, WITH REGARD TO ALL INSTITUTIONS OF HIGHER LEARNING, PERMANENT IMPROVEMENT PROJECT IS DEFINED AS:-~~

- ~~(1) ACQUISITION OF LAND, REGARDLESS OF COST;~~
- ~~(2) ACQUISITION, AS OPPOSED TO THE CONSTRUCTION, OF BUILDINGS OR OTHER STRUCTURES, REGARDLESS OF COST;~~
- ~~(3) CONSTRUCTION OF ADDITIONAL FACILITIES AND WORK ON EXISTING FACILITIES FOR ANY GIVEN PROJECT INCLUDING THEIR RENOVATION, REPAIR, MAINTENANCE, ALTERATION, OR DEMOLITION IN THOSE INSTANCES IN WHICH THE TOTAL COST OF ALL WORK INVOLVED IS FIVE HUNDRED THOUSAND DOLLARS OR MORE;~~
- ~~(4) ARCHITECTURAL AND ENGINEERING AND OTHER TYPES OF PLANNING AND DESIGN WORK, REGARDLESS OF COST, WHICH IS INTENDED TO RESULT IN A PERMANENT IMPROVEMENT PROJECT. MASTER PLANS AND FEASIBILITY STUDIES ARE NOT PERMANENT IMPROVEMENT PROJECTS AND ARE NOT TO BE INCLUDED;~~
- ~~(5) CAPITAL LEASE PURCHASE OF A FACILITY ACQUISITION OR CONSTRUCTION; AND~~
- ~~(6) EQUIPMENT THAT EITHER BECOMES A PERMANENT FIXTURE OF A FACILITY OR DOES NOT BECOME PERMANENT BUT IS INCLUDED IN THE CONSTRUCTION CONTRACT SHALL BE INCLUDED AS A PART OF A PROJECT.~~

~~ANY PERMANENT IMPROVEMENT PROJECT THAT MEETS THE ABOVE DEFINITION MUST BECOME A PROJECT, REGARDLESS OF THE SOURCE OF FUNDS. HOWEVER, AN INSTITUTION OF HIGHER LEARNING THAT HAS BEEN AUTHORIZED OR APPROPRIATED CAPITAL IMPROVEMENT BOND FUNDS, CAPITAL RESERVE FUND OR STATE APPROPRIATED FUNDS, OR STATE INFRASTRUCTURE BOND FUNDS BY THE GENERAL ASSEMBLY FOR CAPITAL IMPROVEMENTS SHALL PROCESS A PERMANENT IMPROVEMENT PROJECT, REGARDLESS OF THE AMOUNT."~~

## **PART IV**

### **FINANCING AND ADMINISTRATIVE IMPROVEMENTS**

**SECTION 7. A. SECTION 59-147-30 OF THE 1976 CODE IS AMENDED TO READ:**

**“SECTION 59-147-30. SUBJECT TO THE APPROVAL FAVORABLE REVIEW OF THE STATE BUDGET AND CONTROL BOARD JOINT BOND REVIEW COMMITTEE BY RESOLUTION DULY ADOPTED, APPROVAL OF THE INSTITUTIONAL BOARD, AND THE PROVISIONS OF SECTIONS 59-147-35 AND 59-147-36, THE UNIVERSITY MAY ISSUE REVENUE BONDS OF THE UNIVERSITY FOR THE PURPOSE OF FINANCING OR REFINANCING IN WHOLE OR IN PART THE COST OF ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND IMPROVEMENT OF LAND, BUILDINGS, AND OTHER IMPROVEMENTS TO REAL PROPERTY AND EQUIPMENT FOR THE PURPOSE OF PROVIDING FACILITIES SERVING THE NEEDS OF THE UNIVERSITY INCLUDING, BUT NOT LIMITED TO, DORMITORIES, APARTMENT BUILDINGS, DWELLING HOUSES, BOOKSTORE AND OTHER UNIVERSITY OPERATED STORES, LAUNDRY, DINING HALLS, CAFETERIAS, PARKING FACILITIES, STUDENT RECREATIONAL, ENTERTAINMENT AND FITNESS RELATED FACILITIES, INNS, CONFERENCE AND OTHER NONDEGREE EDUCATIONAL FACILITIES AND SIMILAR AUXILIARY FACILITIES OF THE UNIVERSITY AND ANY OTHER FACILITIES WHICH ARE AUXILIARY TO ANY OF THE FOREGOING EXCLUDING, HOWEVER, ATHLETIC DEPARTMENT PROJECTS WHICH PRIMARILY SERVE VARSITY ATHLETIC TEAMS OF THE UNIVERSITY.”**

**B. CHAPTER 147, TITLE 59 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 59-147-35. BY RESOLUTION DULY ADOPTED MAKING THE FINDINGS REQUIRED OF IT BY SECTION 59-147-40, THE INSTITUTIONAL BOARD SHALL TRANSMIT TO THE STATE TREASURER A REQUEST FOR THE ISSUANCE OF REVENUE BONDS, SUCH REQUEST SHALL SET FORTH:**

**(1) THE NAME OF THE INSTITUTION REQUESTING ISSUANCE OF REVENUE BONDS, THE AMOUNT OF REVENUE BONDS REQUESTED FOR ISSUANCE, AND THE ANNUAL PRINCIPAL AND INTEREST REQUIREMENTS ON ALL THEN OUTSTANDING REVENUE BONDS;**

**(2) A STATEMENT THAT THE INSTITUTIONAL BOARD HAS MADE THE FINDINGS REQUIRED OF IT BY SECTION 59-147-40;**

**(3) THE PROPOSED MATURITY SCHEDULE OF THE BONDS;**

**(4) THE ANTICIPATED AGGREGATE ANNUAL PRINCIPAL AND INTEREST REQUIREMENTS FOR THE BONDS;**

**(5) THE NUMBERS AND MATURITY DATES OF THE BONDS WHICH SHALL BE SUBJECT TO REDEMPTION PRIOR TO THEIR STATED MATURITIES;**

**(6) THE PROPOSED REDEMPTION PREMIUM SCHEDULE;**

**(7) THE ACTUAL AND PROJECTED REVENUES ANTICIPATED TO BE PLEDGED BY THE INSTITUTION SUPPORTING ISSUANCE OF THE BONDS; AND**

**(8) ANY OTHER SCHEDULES, ANALYSES, AND DOCUMENTS PRESCRIBED BY THE STATE TREASURER WHICH, IN HIS DISCRETION, ARE NECESSARY TO SUPPORT THE REQUEST FOR ISSUANCE OF REVENUE BONDS PURSUANT TO THIS CHAPTER.”**

**C. CHAPTER 147, TITLE 59 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 59-147-36. THE STATE TREASURER SHALL EXAMINE THE REQUEST PROVIDED FOR IN SECTION 59-147-35, AND IF HE SHALL APPROVE IT, AND FOR HIMSELF, DETERMINE THAT THE FACTS AND CIRCUMSTANCES SUPPORT THE REQUEST FOR ISSUANCE OF REVENUE BONDS PURSUANT TO THIS CHAPTER, HE SHALL BE EMPOWERED TO PROVIDE FOR THE ISSUANCE OF REVENUE BONDS IN THE AMOUNT APPROVED BY THE INSTITUTIONAL BOARD.”**



**SECTION 8. CHAPTER 101, TITLE 59 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 59-101-415. (A) BEGINNING JULY 1, 2009, A SELF-SUPPORTING ENTERPRISE OF A FOUR-YEAR OR GRADUATE LEVEL PUBLIC INSTITUTION OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES MAY RETAIN THE REVENUE GENERATED FROM THE ENTERPRISE AS WELL AS THE INTEREST AND EARNINGS ON THESE REVENUES.**

**(B) FOR PURPOSES OF SUBSECTION (A), A SELF-SUPPORTING ENTERPRISE IS AN ENDEAVOR THAT FURNISHES GOODS OR SERVICES TO STUDENTS, FACULTY, AND STAFF, OTHER INSTITUTIONAL DEPARTMENTS AND TO THE GENERAL PUBLIC FOR A FEE RELATED TO THE COST OF THE SERVICE. THESE ACTIVITIES MAY BE INCIDENTAL TO THE CONDUCT OF INSTRUCTION, RESEARCH, AND PUBLIC SERVICE, OR TO PROVIDE INSTRUCTIONAL AND LABORATORY EXPERIENCE FOR STUDENTS AND MAY CREATE GOODS AND SERVICES THAT MAY BE SOLD TO STUDENTS, FACULTY, STAFF, AND THE GENERAL PUBLIC. SELF-SUPPORTING ENTERPRISES GENERATE REVENUES TO SUPPORT OPERATING NEEDS OF THE ACTIVITY AND INCLUDE, BUT ARE NOT LIMITED TO, PROFESSIONAL DEVELOPMENT PROGRAMS, BOTANICAL GARDENS, MUSEUMS, ANIMAL RESEARCH CENTERS AND RESEARCH LABS AND SERVICE CENTERS.**

**(C) THE GENERAL ASSEMBLY EXPRESSES ITS INTENT THAT IN ENACTING THIS SECTION IT DOES NOT INTEND FOR THESE SELF-SUPPORTING ENTERPRISES TO COMPETE WITH THE PRIVATE SECTOR BUT INSTEAD TO ONLY AUGMENT THE MISSION OF THE INSTITUTION AND THE OPERATIONS AND PROGRAMS IT CREATES TO ACCOMPLISH THIS MISSION.”**

**SECTION 9. CHAPTER 101, TITLE 59 OF THE 1976 CODE IS AMENDED BY ADDING:**

## **“ARTICLE 7**

### **PROVISIONS APPLICABLE TO BOND ACTS FOR INSTITUTIONS OF HIGHER LEARNING**

#### **SECTION 59-101-1010. AS USED IN THIS ARTICLE:**

**(1) ‘BOND ACTS’ MEANS THE VARIOUS REVENUE BOND ACTS FOR PUBLIC INSTITUTIONS, INCLUDING THOSE IDENTIFIED IN THIS ITEM AND ALSO INCLUDING ANY OTHERS NOT IDENTIFIED IN THIS ITEM.**

**(A) UNIVERSITY OF SOUTH CAROLINA:**

**(I) ACT 518 OF 1980 - ATHLETIC FACILITIES REVENUE BONDS;**

**(II) ACT 366 OF 2008 - BUSINESS SCHOOL REVENUE BONDS;**

**(III) ARTICLE 3, CHAPTER 117, TITLE 59 - AUXILIARY FACILITIES REVENUE BONDS;**

**(B) CLEMSON UNIVERSITY:**

**(I) ARTICLE 5, CHAPTER 119, TITLE 59 - CLEMSON REVENUE BONDS;**

**(II) ARTICLE 9, CHAPTER 119, TITLE 59 - ATHLETIC FACILITIES REVENUE BONDS;**

**(III) ARTICLE 7, CHAPTER 119, TITLE 59 - AUXILIARY FACILITIES REVENUE BONDS;**

**(C) MEDICAL UNIVERSITY OF SOUTH CAROLINA:**

**(I) ACT 392 OF 1982 - STUDENT AND FACULTY HOUSING FACILITIES;**

**(D) THE CITADEL:**

**(I) ARTICLE 3, CHAPTER 121, TITLE 59 - CITADEL ATHLETIC FACILITIES BONDS;**

**(II) CHAPTER 122, TITLE 59 - THE CITADEL HOUSING REVENUE BONDS;**

**(E) COLLEGE OF CHARLESTON:**

- (I) CHAPTER 130, TITLE 59 - REVENUE BONDS;
  - (II) CHAPTER 131, TITLE 59 - PARKING FACILITIES AT THE COLLEGE OF CHARLESTON;
  - (III) ACT 1281 OF 1970 - STUDENT AND FACULTY HOUSING REVENUE BONDS AND PLANT IMPROVEMENT BONDS;
  - (IV) ACT 77 OF 1975 - PARKING FACILITIES REVENUE BONDS;
  - (V) ACT 653 OF 1978 - STUDENT AND HOUSING REVENUE BONDS;
- (F) SOUTH CAROLINA STATE UNIVERSITY:
  - (I) ARTICLE 3, CHAPTER 127, TITLE 59 - SPECIAL OBLIGATIONS BONDS;
  - (II) ARTICLE 4, CHAPTER 127, TITLE 59 - SOUTH CAROLINA STATE UNIVERSITY ACADEMICS AND ADMISSIONS FACULTY FACILITIES BONDS;
- (G) WINTHROP UNIVERSITY:
  - (I) ARTICLE 3, CHAPTER 125, TITLE 59 - WINTHROP UNIVERSITY FACILITIES REVENUE BOND ACT;
  - (II) ARTICLE 5, CHAPTER 125 - WINTHROP UNIVERSITY ATHLETIC FACILITIES BONDS;
  - (III) ACT 488 OF 1965 - STUDENT AND FACULTY HOUSING REVENUE BONDS;
- (H) COASTAL CAROLINA UNIVERSITY:
  - (I) ARTICLE 3, CHAPTER 136, TITLE 59 - REVENUE BONDS;
- (I) LANDER UNIVERSITY:
  - (I) ACT 1305 OF 1974 - STUDENT AND FACULTY HOUSING REVENUE BONDS;
- (J) FRANCIS MARION UNIVERSITY:
  - (I) ACT 653 OF 1978 - STUDENT AND FACULTY HOUSING REVENUE BONDS;

**(II) ARTICLE 3, CHAPTER 133, TITLE 59 - ATHLETIC FACILITIES REVENUE BONDS.**

**(2) 'PUBLIC INSTITUTION' MEANS A FOUR-YEAR AND GRADUATE LEVEL PUBLIC INSTITUTION OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES.**

**SECTION 59-101-1020. ALL AUTHORITY AND DUTIES OF THE STATE BUDGET AND CONTROL BOARD WITH RESPECT TO BOND ACTS IS DEVOLVED UPON THE JOINT BOND REVENUE COMMITTEE ESTABLISHED PURSUANT TO CHAPTER 47, TITLE 2, FOR REVIEW AND APPROVAL BY THE CORRESPONDING INSTITUTIONAL BOARD PURSUANT TO THIS TITLE.**

**PART V**

**PROCUREMENT CODE REVISIONS**

**SECTION 10. ARTICLE 1, CHAPTER 1, TITLE 6 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 6-1-135. WHEN A COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT ACTING THROUGH THE PROCUREMENT PROCESS APPLICABLE TO IT ENTERS INTO A CONTRACT WITH A VENDOR TO ACQUIRE GOODS OR SERVICES FROM THAT VENDOR, A FOUR-YEAR OR GRADUATE LEVEL INSTITUTION OF HIGHER LEARNING NOT INCLUDING TECHNICAL COLLEGES LOCATED IN THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT, UPON THE CONSENT OF THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT, AND THE VENDOR, ALSO MAY BECOME A PARTY TO THE CONTRACT THEREBY MAKING THE GOODS OR SERVICES AVAILABLE TO THE INSTITUTION OF HIGHER LEARNING UNDER THE SAME TERMS AND CONDITIONS THEY ARE AVAILABLE TO THE COUNTY,**

**MUNICIPALITY, OR SCHOOL DISTRICT WITHOUT THE NECESSITY OF COMPLYING WITH ANY OTHER PROCUREMENT REQUIREMENTS.”**

**SECTION 11. SECTION 11-35-1550(2) OF THE 1976 CODE, AS LAST AMENDED BY ACT 376 OF 2006, IS FURTHER AMENDED TO READ:**

**“(2)COMPETITION AND PRICE REASONABLENESS.**

**(A) PURCHASES NOT IN EXCESS OF TWO THOUSAND FIVE HUNDRED DOLLARS. EXCEPT AS PROVIDED IN SUBITEM (D) BELOW, SMALL PURCHASES NOT EXCEEDING TWO THOUSAND FIVE HUNDRED DOLLARS MAY BE ACCOMPLISHED WITHOUT SECURING COMPETITIVE QUOTATIONS IF THE PRICES ARE CONSIDERED REASONABLE. THE PURCHASING OFFICE MUST ANNOTATE THE PURCHASE REQUISITION: ‘PRICE IS FAIR AND REASONABLE’ AND SIGN. THE PURCHASES MUST BE DISTRIBUTED EQUITABLY AMONG QUALIFIED SUPPLIERS. WHEN PRACTICAL, A QUOTATION MUST BE SOLICITED FROM OTHER THAN THE PREVIOUS SUPPLIER BEFORE PLACING A REPEAT ORDER. THE ADMINISTRATIVE COST OF VERIFYING THE REASONABLENESS OF THE PRICE OF PURCHASE ‘NOT IN EXCESS OF’ MAY MORE THAN OFFSET POTENTIAL SAVINGS IN DETECTING INSTANCES OF OVERPRICING. ACTION TO VERIFY THE REASONABLENESS OF THE PRICE NEED BE TAKEN ONLY WHEN THE PROCUREMENT OFFICER OF THE GOVERNMENTAL BODY SUSPECTS THAT THE PRICE MAY NOT BE REASONABLE, COMPARISON TO PREVIOUS PRICE PAID, OR PERSONAL KNOWLEDGE OF THE ITEM INVOLVED.**

**(B) PURCHASES OVER TWO THOUSAND FIVE HUNDRED DOLLARS TO TEN THOUSAND DOLLARS. EXCEPT AS PROVIDED IN SUBITEM (D) BELOW, SOLICITATION OF WRITTEN QUOTES FROM A MINIMUM OF THREE QUALIFIED SOURCES OF SUPPLY MUST BE MADE AND DOCUMENTATION OF THE QUOTES ATTACHED TO THE PURCHASE REQUISITION FOR A SMALL PURCHASE OVER TWO THOUSAND FIVE HUNDRED DOLLARS BUT NOT IN EXCESS OF TEN THOUSAND DOLLARS.**

**THE AWARD MUST BE MADE TO THE LOWEST RESPONSIVE AND RESPONSIBLE SOURCES.**

**(C) PURCHASES OVER TEN THOUSAND DOLLARS UP TO FIFTY THOUSAND DOLLARS. WRITTEN SOLICITATION OF WRITTEN QUOTES, BIDS, OR PROPOSALS MUST BE MADE FOR A SMALL PURCHASE OVER TEN THOUSAND DOLLARS BUT NOT IN EXCESS OF FIFTY THOUSAND DOLLARS. THE PROCUREMENT MUST BE ADVERTISED AT LEAST ONCE IN THE SOUTH CAROLINA BUSINESS OPPORTUNITIES PUBLICATION OR THROUGH A MEANS OF CENTRAL ELECTRONIC ADVERTISING AS APPROVED BY THE DESIGNATED BOARD OFFICE. A COPY OF THE WRITTEN SOLICITATION AND WRITTEN QUOTES MUST BE ATTACHED TO THE PURCHASE REQUISITION. THE AWARD MUST BE MADE TO THE LOWEST RESPONSIVE AND RESPONSIBLE SOURCE OR, WHEN A REQUEST FOR PROPOSAL PROCESS IS USED, THE HIGHEST RANKING OFFEROR.**

**(D) FOR FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES, SMALL PURCHASE AMOUNTS TO WHICH THE PROVISIONS OF SUBITEM (A) ABOVE SHALL APPLY ARE THOSE PURCHASES NOT EXCEEDING TEN THOUSAND DOLLARS, AND FOR THESE PURCHASES SUBITEM (B) ABOVE SHALL NOT APPLY. IN ADDITION, PURCHASING CARDS OF THE INSTITUTION FOR THESE PURCHASES ALSO MAY BE USED BY OFFICIALS OR EMPLOYEES OF THE INSTITUTION AS THE GOVERNING BOARD THEREOF APPROVES.**

**SECTION 12. SECTION 11-35-3310 OF THE 1976 CODE, AS LAST AMENDED BY ACT 174 OF 2008, IS FURTHER AMENDED TO READ:**

**“SECTION 11-35-3310. (1) GENERAL APPLICABILITY. INDEFINITE DELIVERY CONTRACTS MAY BE AWARDED ON AN AS-NEEDED BASIS FOR CONSTRUCTION SERVICES PURSUANT TO THE PROCEDURES IN SECTION 11-35-3015(2)(B) AND FOR**

**ARCHITECTURAL-ENGINEERING AND LAND SURVEYING SERVICES PURSUANT TO SECTION 11-35-3220.**

**(A) CONSTRUCTION SERVICES. WHEN CONSTRUCTION SERVICES CONTRACTS ARE AWARDED, EACH CONTRACT SHALL BE LIMITED TO A TOTAL EXPENDITURE OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS FOR A TWO-YEAR PERIOD WITH INDIVIDUAL PROJECT EXPENDITURES NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS; PROVIDED, THAT THESE LIMITS FOR FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING NOT INCLUDING TECHNICAL COLLEGES IN THIS ITEM SHALL BE ONE MILLION DOLLARS FOR TOTAL EXPENDITURES AND TWO HUNDRED FIFTY THOUSAND DOLLARS FOR INDIVIDUAL EXPENDITURES WITHIN THE TIME PERIODS SPECIFIED.**

**(B) ARCHITECTURAL-ENGINEERING AND LAND SURVEYING SERVICES. WHEN ARCHITECTURAL-ENGINEERING AND LAND SURVEYING SERVICES CONTRACTS ARE AWARDED, EACH CONTRACT SHALL BE LIMITED TO A TOTAL EXPENDITURE OF THREE HUNDRED THOUSAND DOLLARS FOR A TWO-YEAR PERIOD WITH INDIVIDUAL PROJECT EXPENDITURES NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS; PROVIDED, THAT THESE LIMITS FOR FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING NOT INCLUDING TECHNICAL COLLEGES IN THIS ITEM SHALL BE FIVE HUNDRED THOUSAND DOLLARS FOR TOTAL EXPENDITURES AND TWO HUNDRED THOUSAND DOLLARS FOR INDIVIDUAL EXPENDITURES WITHIN THE TIME PERIODS SPECIFIED.**

**(2) SMALL INDEFINITE DELIVERY CONTRACTS. SMALL INDEFINITE DELIVERY CONTRACTS FOR ARCHITECTURAL-ENGINEERING AND LAND SURVEYING SERVICES MAY BE PROCURED AS PROVIDED IN SECTION 11-35-3230. A CONTRACT ESTABLISHED UNDER THIS SECTION SHALL BE SUBJECT TO SECTION 11-35-3230, AND ANY REGULATIONS PROMULGATED THEREUNDER EXCEPT THAT THE INDIVIDUAL AND TOTAL CONTRACT LIMITS SHALL BE FIFTY AND ONE HUNDRED FIFTY**

**THOUSAND DOLLARS RESPECTIVELY FOR FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING NOT INCLUDING TECHNICAL COLLEGES.”**

**SECTION 13. SECTION 11-35-4810 OF THE 1976 CODE IS AMENDED BY ADDING AT THE END:**

**“SECTION 11-35-4810. ANY PUBLIC PROCUREMENT UNIT MAY PARTICIPATE IN, SPONSOR, CONDUCT, OR ADMINISTER A COOPERATIVE PURCHASING AGREEMENT FOR THE PROCUREMENT OF ANY SUPPLIES, SERVICES, OR CONSTRUCTION WITH ONE OR MORE PUBLIC PROCUREMENT UNITS OR EXTERNAL PROCUREMENT ACTIVITIES IN ACCORDANCE WITH AN AGREEMENT ENTERED INTO BETWEEN THE PARTICIPANTS. SUCH COOPERATIVE PURCHASING MAY INCLUDE, BUT IS NOT LIMITED TO, JOINT OR MULTI-PARTY CONTRACTS BETWEEN PUBLIC PROCUREMENT UNITS AND OPEN-ENDED STATE PUBLIC PROCUREMENT UNIT CONTRACTS WHICH SHALL BE MADE AVAILABLE TO LOCAL PUBLIC PROCUREMENT UNITS, EXCEPT AS PROVIDED IN SECTION 11-35-4820 OR EXCEPT AS MAY OTHERWISE BE LIMITED BY THE BOARD THROUGH REGULATIONS.**

**HOWEVER, THIRTY DAYS NOTICE OF A PROPOSED MULTI-STATE SOLICITATION SHALL BE PROVIDED THROUGH CENTRAL ADVERTISING AND SUCH CONTRACTS MAY BE ONLY AWARDED TO MANUFACTURERS WHO WILL BE DISTRIBUTING THE PRODUCTS TO SOUTH CAROLINA GOVERNMENTAL BODIES THROUGH SOUTH CAROLINA VENDORS; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH DO NOT APPLY TO FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE NOT INCLUDING TECHNICAL COLLEGES IF THE INSTITUTION DEMONSTRATES A COST SAVINGS TO THE OFFICE OF STATE PROCUREMENT IN REGARD TO THE MULTI-STATE SOLICITATION AND PROCUREMENT.”**



## **PART VI**

### **MISCELLANEOUS PROVISIONS**

**SECTION 14. SECTION 1-7-170 OF THE 1976 CODE, AS ADDED BY ACT 353 OF 2008, IS AMENDED TO READ:**

**“SECTION 1-7-170. A DEPARTMENT OR AGENCY OF STATE GOVERNMENT MAY NOT ENGAGE ON A FEE BASIS AN ATTORNEY AT LAW EXCEPT UPON THE WRITTEN APPROVAL OF THE ATTORNEY GENERAL AND UPON A FEE AS MUST BE APPROVED BY HIM. THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF ATTORNEYS IN SPECIAL CASES IN INFERIOR COURTS WHEN THE FEE TO BE PAID DOES NOT EXCEED TWO HUNDRED FIFTY DOLLARS OR EXCEPTIONS APPROVED BY THE STATE BUDGET AND CONTROL BOARD. THIS SECTION DOES NOT APPLY TO AN ATTORNEY HIRED BY THE GENERAL ASSEMBLY OR THE JUDICIAL DEPARTMENT.**

**(B) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A), A FOUR-YEAR AND GRADUATE PUBLIC INSTITUTION OF HIGHER LEARNING NOT INCLUDING TECHNICAL COLLEGES WHEN IT DETERMINES TO EMPLOY OUTSIDE COUNSEL ON A PARTICULAR MATTER, FOR A SERIES OF SIMILAR MATTERS, OR ON A RETAINER BASIS SHALL SUBMIT THE NAMES OF THREE QUALIFIED LAW FIRMS CONSISTING OF A SINGLE PRACTITIONER OR A GROUP OF PRACTITIONERS FROM WHICH THE ATTORNEY GENERAL SHALL APPROVE ONE OR MORE WHICH THE INSTITUTION IS THEN AUTHORIZED TO EMPLOY OR RETAIN. APPROVAL BY THE ATTORNEY GENERAL OF THESE LAW FIRMS ALSO AUTHORIZES THE INSTITUTION TO PAY LEGAL FEES TO THAT FIRM AT ITS USUAL AND CUSTOMARY RATES FOR ENGAGING IN THAT TYPE OF WORK.”**

**SECTION 15. (A) ARTICLE 1, CHAPTER 101, TITLE 59 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 59-101-55. STATE APPROPRIATED FUNDS SHALL NOT BE USED TO PROVIDE OUT-OF-STATE SUBSIDIES TO STUDENTS ATTENDING STATE-SUPPORTED INSTITUTIONS OF HIGHER LEARNING.**

**(B) SECTION 59-101-620 OF THE 1976 CODE IS AMENDED TO READ:**

**“SECTION 59-101-620. (A) A PUBLIC INSTITUTION OF HIGHER LEARNING MAY OFFER EDUCATIONAL FEE WAIVERS TO NO MORE THAN FOUR PERCENT OF THE UNDERGRADUATE STUDENT BODY; PROVIDED THAT FOUR-YEAR AND GRADUATE LEVEL STATE-SUPPORTED INSTITUTIONS OF HIGHER LEARNING NOT INCLUDING TECHNICAL COLLEGES MAY OFFER EDUCATIONAL FEE WAIVERS TO NOT MORE THAN EIGHT PERCENT OF THEIR STUDENT BODY.**

**(B) STATE-SUPPORTED INSTITUTIONS OF HIGHER LEARNING TO WHICH SUBSECTION (A) APPLIES SHALL ANNUALLY REPORT TO THE COMMISSION ON HIGHER EDUCATION THE AMOUNT OF SUCH WAIVERS PROVIDED DURING THAT FISCAL YEAR AND SUCH OTHER INFORMATION AS THE COMMISSION MAY REQUIRE IN REGARD TO THESE WAIVERS.”**

## **PART VII**

### **SEVERABILITY AND TIME EFFECTIVE**

**SECTION 16. IF ANY SECTION, SUBSECTION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE, PHRASE, OR WORD OF THIS ACT IS FOR ANY REASON HELD TO BE UNCONSTITUTIONAL OR INVALID, SUCH HOLDING SHALL NOT AFFECT THE CONSTITUTIONALITY OR VALIDITY OF THE REMAINING PORTIONS OF THIS ACT, THE GENERAL ASSEMBLY HEREBY DECLARING THAT IT WOULD HAVE PASSED THIS ACT, AND EACH AND EVERY SECTION, SUBSECTION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE, PHRASE, AND WORD THEREOF, IRRESPECTIVE OF**

**THE FACT THAT ANY ONE OR MORE OTHER SECTIONS, SUBSECTIONS, PARAGRAPHS, SUBPARAGRAPHS, SENTENCES, CLAUSES, PHRASES, OR WORDS HEREOF MAY BE DECLARED TO BE UNCONSTITUTIONAL, INVALID, OR OTHERWISE INEFFECTIVE.**

**SECTION 17. UNLESS OTHERWISE PROVIDED, THIS ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR.     /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO READ:**

**/TO ENACT THE SOUTH CAROLINA HIGHER EDUCATION EFFICIENCY AND ADMINISTRATIVE POLICIES ACT OF 2009, INCLUDING PROVISIONS TO AMEND CHAPTER 101 OF TITLE 59, RELATING TO HIGHER EDUCATION, BY ADDING ARTICLE 5 SO AS TO FURTHER PROVIDE FOR HUMAN RESOURCES POLICIES, PROCEDURES, AND REQUIREMENTS FOR PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE EXCEPT FOR TECHNICAL COLLEGES; TO AMEND SECTION 8-11-260, AS AMENDED, RELATING TO STATE PERSONNEL ADMINISTRATIVE REQUIREMENTS, SO AS TO EXEMPT EMPLOYEES OF THESE INSTITUTIONS WITH CERTAIN EXCEPTIONS; BY ADDING SECTION 2-47-53 SO AS TO PROVIDE FOR THE ESTABLISHMENT OF PERMANENT IMPROVEMENT PROJECTS FOR THE STATE'S INSTITUTIONS OF HIGHER LEARNING, EXCLUDING TECHNICAL COLLEGES, AND FOR THE APPROVAL OF THESE PROJECTS AND TO REDEFINE 'PERMANENT IMPROVEMENT PROJECT' FOR PURPOSES OF PROPOSALS BY INSTITUTIONS OF HIGHER LEARNING IN THIS STATE; TO AMEND SECTION 1-11-65, RELATING TO APPROVAL OF REAL PROPERTY TRANSACTIONS BY THE STATE BUDGET AND CONTROL**

**BOARD AND ACCEPTANCE OF THE TRANSFER OF TANGIBLE PERSONAL PROPERTY BY A STATE ENTITY, SO AS TO EXEMPT CERTAIN REAL PROPERTY TRANSACTIONS MADE FOR OR BY THESE INSTITUTIONS OF HIGHER LEARNING; BY ADDING SECTION 2-47-54 SO AS TO PROVIDE THAT THE STATE'S INSTITUTIONS OF HIGHER LEARNING, EXCLUDING TECHNICAL COLLEGES, MAY ENTER INTO A GROUND LEASE AGREEMENT WITH A PRIVATE ENTITY FOR THE BUILDING OF ON-CAMPUS INFRASTRUCTURE AND TO EXEMPT THE TRANSACTION AND ENTITY FROM THE CONSOLIDATED PROCUREMENT CODE; TO AMEND SECTIONS 2-47-30, 2-47-35, 2-47-40, AND 2-47-50, RELATING TO THE JOINT BOND REVIEW COMMITTEE, SO AS TO FURTHER PROVIDE FOR THE PROCESSES AND PROCEDURES OF THE COMMITTEE AND THE BUDGET AND CONTROL BOARD IN REGARD TO CERTAIN PROJECTS; BY ADDING SECTIONS 59-147-35 AND 59-147-36 AND TO AMEND SECTION 59-147-30, RELATING TO THE PROCEDURES FOR THE ISSUANCE OF REVENUE BONDS UNDER THE HIGHER EDUCATION REVENUE BOND ACT, SO AS TO REVISE THESE PROCEDURES; BY ADDING SECTION 59-101-415 SO AS TO PROVIDE THAT A SELF-SUPPORTING ENTERPRISE OF A FOUR-YEAR OR GRADUATE LEVEL PUBLIC INSTITUTION OF HIGHER LEARNING IN THIS STATE MAY RETAIN THE REVENUE GENERATED FROM THE ENTERPRISE AS WELL AS THE INTEREST AND EARNINGS ON THESE REVENUES, AND TO DEFINE A SELF-SUPPORTING ENTERPRISE FOR THIS PURPOSE; TO AMEND CHAPTER 101 OF TITLE 59, RELATING TO HIGHER EDUCATION, BY ADDING ARTICLE 7 SO AS TO PROVIDE FOR CERTAIN PROVISIONS APPLICABLE TO BOND ACTS FOR INSTITUTIONS OF HIGHER LEARNING; BY ADDING SECTION 6-1-135 SO AS TO PROVIDE THAT WHEN A**

**COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT ACTING THROUGH THE PROCUREMENT PROCESS APPLICABLE TO IT ENTERS INTO A CONTRACT WITH A VENDOR TO ACQUIRE GOODS OR SERVICES FROM THAT VENDOR, A FOUR-YEAR OR GRADUATE LEVEL PUBLIC INSTITUTION OF HIGHER LEARNING LOCATED IN THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT, UPON THE CONSENT OF THE COUNTY, MUNICIPALITY OR SCHOOL DISTRICT, AND THE VENDOR, ALSO MAY BECOME A PARTY TO THE CONTRACT THEREBY MAKING THE GOODS OR SERVICES AVAILABLE TO THE INSTITUTION OF HIGHER LEARNING UNDER THE SAME TERMS AND CONDITIONS THEY ARE AVAILABLE TO THE COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT WITHOUT THE NECESSITY OF COMPLYING WITH ANY OTHER PROCUREMENT REQUIREMENTS; TO AMEND SECTION 11-35-1550, AS AMENDED, RELATING TO SMALL PURCHASES UNDER THE CONSOLIDATED PROCUREMENT CODE AND BID PROCEDURES ON PROCUREMENTS UP TO FIFTY THOUSAND DOLLARS, SO AS TO INCREASE THE AMOUNT OF AUTHORIZED SMALL PURCHASES BY FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING AND TO AUTHORIZE THESE INSTITUTIONS TO USE PURCHASING CARDS FOR THESE PURCHASES IN THE AMOUNT AUTHORIZED; TO AMEND SECTION 11-35-3310, AS AMENDED, RELATING TO INDEFINITE DELIVERY CONTRACTS FOR CONSTRUCTION, ARCHITECTURAL-ENGINEERING AND LAND SURVEYING SERVICES, SO AS TO RAISE THE PERMITTED AMOUNTS OF SUCH CONTRACTS; TO AMEND SECTION 11-35-4810, RELATING TO COOPERATIVE PURCHASES OF PUBLIC ENTITIES UNDER THE CONSOLIDATED PROCUREMENT CODE, SO AS TO ESTABLISH CERTAIN EXCEPTIONS FOR**

**FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING IN REGARD TO NOTICE AND ELIGIBLE VENDORS; TO AMEND SECTION 1-7-170, RELATING TO THE REQUIRED APPROVAL OF THE ATTORNEY GENERAL BEFORE AN AGENCY OR DEPARTMENT OF THIS STATE MAY ENGAGE AN ATTORNEY AT LAW ON A FEE BASIS AND EXCEPTIONS TO THIS REQUIREMENT, SO AS TO ESTABLISH A SPECIAL APPROVAL PROCEDURE FOR FOUR-YEAR AND GRADUATE PUBLIC INSTITUTIONS OF HIGHER LEARNING; BY ADDING SECTION 59-101-55 SO AS TO PROVIDE THAT STATE APPROPRIATED FUNDS SHALL NOT BE USED TO PROVIDE OUT-OF-STATE SUBSIDIES TO STUDENTS ATTENDING STATE-SUPPORTED INSTITUTIONS OF HIGHER LEARNING; AND TO AMEND SECTION 59-101-620, RELATING TO LIMITATIONS ON EDUCATIONAL FEE WAIVERS OFFERED BY PUBLIC INSTITUTIONS OF HIGHER LEARNING, SO AS TO REVISE THESE LIMITATIONS FOR CERTAIN INSTITUTIONS AND TO PROVIDE FOR ANNUAL REPORTING REQUIREMENTS TO THE COMMISSION OF HIGHER EDUCATION IN REGARD TO THESE WAIVERS. /**

**H.3365**

**The South Carolina Higher Education Efficiency and Administrative Policies Act of 2009  
Section by Section Summary**

**Part I**

**Citation**

**Section 1 – Title – The South Carolina Higher Education Efficiency and Administrative Act of 2009**

**Part II**

**Human Resources Reforms**

**These sections of the bill allow the authority for setting human resource policies to reside with the Board of Trustees at the individual higher education institutions. Additionally, it maintains employees rights under the state grievance procedures, eligibility for state health benefits and retirement, and maintains eligibility and funding for state mandated pay raises.**

**Section 2.**

**Section 59-101-1010 (A)**

For the purposes of this bill, “public institution of higher learning” is defined as a four year and graduate level public institutions. The technical colleges are excluded from the provisions of this bill.

**Section 59-101-1010 (B)**

Defines “Institutional Board” as the governing body of the institutions of higher learning.

**Section 59-101-1020 (A)** Delegates the authority and responsibility of establishing human resources policies to the individual governing boards of each higher education institution.

**(B)** Maintains the State Grievance Procedure Act for employees to which it presently applies.

**(C)** Requires that human resource policies established by the individual institutions must be submitted to the Office of Human Resources for review and comment.

**(D)** Requires that FTE’s continue to be monitored by the Budget and Control Board.

**Section 59-101-1030**

Continues the applicability and access to the state health and retirement plans for employees of higher education institutions.

**Section 59-101-1040**

Ensures that state funded FTE’s will receive any state mandated pay raises that may be appropriated for by the General Assembly.

**Section 3.**

Section 8-11-260 amended to conform to changes contained in Section 2 above. This amendment adds to the list of categories of employees currently exempt from the state employee rules those "employees of four year and graduate level public institutions of higher learning". Requires that FTE's continue to be monitored by the Budget and Control Board.

**Part III****Facilities & Capital Expenditure Revisions**

**For the purposes of this bill, a new section has been added that defines the permanent improvement project process for higher education institutions. This process is streamlined to allow final review authority to reside with the Joint Bond Review Committee and approval authority with the institutional boards. This section also establishes a project's value at \$1 million.**

**Section 4A****Section 2-47-53**

(A) Describes the procedures for establishing permanent improvement projects for higher education as requiring favorable review by Joint Bond Review Committee. It allows for the completion of architectural and engineering/design to be completed before the establishment of a project.

(B) Requires additional approval by Joint Bond Review Committee if funds are added to a project.

(C)(1) Details the process that an institution must go through if the scope or budget of an established project changes.

(C)(2) Provides flexibility of up to 20% or up to \$2 million within capital project budgets prior to the additional review of the CHE and JBRC. Staff level approval is required.

(D)(1) This defines the categories of projects that are considered permanent improvement projects which are valued at one million dollars or more.

(D)(2) This sub-section mandates that any project falling under (D)(1) or receives any capital improvement bond funds, state institution bond funds, capital reserve funds, state appropriated funds, or state infrastructure bond funds must be identified as a permanent improvement project.

(E) Requires that any acquisition of land or acquisition of buildings and other structures, regardless of cost, have a Phase I Environmental Study, an appraisal, staff approval. Projects over a \$1 million will require JBRC favorable review and approval by the institutional board.

(F) Allows Clemson PSA and SC State PSA capital projects to be defined at the same values as the university.



**Section 4B****Section 1-11-65(A)**

Amends the Budget and Control Board statute to conform to 2-47-53(D1) and removes higher education real property transactions from the approval process of the Budget and Control Board.

**Section 5**

**This section of the bill expands the applicability of ground lease agreements to all public higher education institutions as defined by this bill and allows these agreements to be used for public private partnerships for on campus infrastructure.**

**Section 2-47-54**

Allows institutional boards to enter into lease agreements with private entities for creation/operation of facilities on campus.

Private entities must agree to surrender the property to the institution upon expiration of the lease.

Full faith and credit of the state can not apply to these agreements.

These agreements must be favorably reviewed and by JBRC and approved by the institutional board.

They must adhere to state, fire, life and safety codes and must comply with South Carolina consolidated procurement code (Title 11, Chapter 35)

**Section 6(A)**

**This section amends the current codes 2-47-30, 2-47-35, 2-47-40, 2-47-50 regarding permanent improvement projects to conform with the new section 2-47-53 above. In addition, this section amends language at the request of legislative council to ensure consistency with technical changes to the existing language.**

**Part IV****Financing and Administrative Improvement and Changes****Section 7(A)**

**This section amends the Higher Education Revenue Bond Act to require the issuance of revenue bonds to be favorably reviewed by the Joint Bond Review Committee and final approval for issuance by the institutional boards.**

Section 59-147-30 Amends current statute to allow favorable review by Joint Bond Review Committee and final approval by the institutional board. Requires conformity to new sections 59-147-35 and 59-147-36.

Section 59-147-35 – This section was requested by the State Treasurer to ensure conformity as it relates to the information that must be submitted to the State Treasurer before a resolution can be adopted regarding the issuance of revenue bonds.

Section 59-147-36 - This section requires that the State Treasurer approve the issuance of revenue bonds.

#### **Section 8**

**This section provides a definition for “self supporting enterprise” to allow that higher education institutions, as defined by this bill, to retain the revenues and interest from any new self supporting program instituted by the institution. This definition shall only apply to those enterprise created after July 1, 2009.**

Section 59-101-415 (A) Allows institutions to retain revenue and interest from new self-supporting enterprises after July 1, 2009.

B) This defines a self-supporting enterprise.

#### **Section 9**

**This section amends the individual revenue bond statutes applicable to higher education institutions for the purposes of allowing final review of these revenue bonds to reside with the Joint Bond Review Committee and final approval by the institutional boards.**

Section 59-101-1010

1) Defines “ Bond Act” for the purposes of this article and identifies the various revenue bond acts currently in statute.

2) Defines public institution as it pertains to this bill.

Section 59-101-1020

Devolves authority of the Budget and Control Board related to the bond acts listed and allows final review to reside with the Joint Bond Review Committee and final approval with the various institutional boards.

### **Part V**

#### **Procurement Code Revisions**

#### **Section 10**

**This section allows higher education institutions, as defined by the bill, to “piggyback” on existing contracts for goods and services that have been procured by a county, a municipality, or a school district with that entities consent.**

Section 6-1-135

Allows the institutions defined in this amendment to enter into cooperative vendor contracts with county, municipality or school district.

### **Section 11**

**This section amends the procurement code to allow increases in the threshold amount for small purchases from \$2,500 to \$10,000 for higher education institutions as defined by the bill.**

Section 11-35-1550(2)(A) Adds reference to a new subsection (D)

(2)(B) Adds reference to a new subsection (D)

(2)(C) No changes to current code

(2)(D) New language that allows institutions and increase in small purchase amount in (A) not to exceed ten thousand dollars, which allows the institutions to purchase items under that amount without a bid process but establishes how the purchase must be made, and that subitem (B) above does not apply because the ten thousand in this section is above the amount addressed in subitem (B). This language also allows the institutions to use purchasing cards with governing board approval.

### **Section 12**

**This section amends the procurement code governing indefinite delivery contracts to allow increases in the threshold amounts for construction services, architectural-engineering, and small indefinite delivery contracts.**

Section 11-35-3310(1)(A) This amendment increases the amounts that can be paid for construction service contracts from \$500,000 to \$1 million over a two year period. Individual project expenditure amounts are increased from \$150,000 to \$250,000.

Section 11-35-3310(1)(B) This amendment increases the amounts that can be paid for architectural-engineering and land surveying from \$300,000 to \$500,000 over a two year period. Individual project expenditure amounts are increased from \$100,000 to \$200,000.

Section 11-35-3310(2) This increases the ceiling on the price that can be paid for small indefinite delivery contracts to \$50,000 and \$150,000 respectively.

### **Section 13**

**This section amends the procurement code to allow higher education institutions to participate in multistate cooperative agreements and eliminates the requirement only through South Carolina vendors.**

Section 11-35-4810 Exempt higher education institutions from not being able to use out of state providers in multiple cooperative contracts with institutions outside of this state.

## **Part VI Miscellaneous Provisions**

### **Section 14**

**This section allows higher education institutions as defined by this bill to receive written approval by the Attorney General for up to three names of qualified law firms when employing outside legal counsel.**

Section 1-7-170 (B) This allows institutions to submit three firms to the Attorney General for written approval of one or more for fee based work and the types and terms of work.

#### **Section 15**

**This section provides higher education institutions additional flexibility to grant tuition waivers and scholarships derived from state or public funds of up to 8%.**

Section 59-101-55 – Codifies that state appropriated funds shall not be used to provide subsidies to out of state students.

Section 59-101-620 – Amends current statute to allow tuition waivers of not more than 8% and requires an annual report be submitted to the Commission on Higher Education regarding the utilization of these waivers.

### **Part VII**

#### **Severability and Time Effective**

#### **Section 16**

**This is a standard severability clause so that if any part of this bill unconstitutional or invalid the rest of the bill will remain intact.**

#### **Section 17**

**This section provides that the Act takes effect upon approval by the Governor unless otherwise provided for in the bill.**

# **REPORT OF THE BUDGET AND FINANCE SUBCOMMITTEE**

(Cooper, Bingham, J.R. Smith, White & AD Young - Staff Contact: Beverly Smith)

---

---

## **HOUSE BILL 3584**

---

---

H. 3584 -- Reps. Harrell, Bingham, Cooper, Harrison, Owens, Sandifer, White, Crawford, Bannister, Huggins, Sottile, Spires, Herbkersman, Loftis, Bowen, Erickson, Daning, Hardwick, J.R. Smith, Pinson, Toole, Brady, Clemmons, Edge, Forrester, Frye, Gullick, Hearn, Hiott, Horne, Kelly, Littlejohn, Long, E.H. Pitts, Rice, Skelton, D.C. Smith, G.M. Smith, Whitmire and Wylie: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-625 SO AS TO IMPOSE A SURTAX ON EACH CIGARETTE IN AN AMOUNT OF TWO AND ONE-HALF CENTS, PROVIDE FOR THE CREDITING OF THE REVENUE FROM THE SURTAX TO THE SMOKING PREVENTION AND CESSATION TRUST FUND, THE DEPARTMENT OF AGRICULTURE FOR MARKETING AND BRANDING STATE-GROWN CROPS AND TO ASSIST IN RELIEF FROM NATURAL DISASTERS AFFECTING STATE-GROWN CROPS, THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE TRUST FUND, AND THE PALMETTO HEALTH CARE SAFETY NET TRUST FUND, PROVIDE FOR REPORTING, PAYMENT, COLLECTION, AND ENFORCEMENT OF THE SURTAX, AND DEFINE "CIGARETTE"; TO AMEND SECTION 12-21-620, RELATING TO THE ORIGINAL CIGARETTE TAX, SO AS TO CONFORM DEFINITIONS; BY ADDING SECTION 11-11-230 SO AS TO CREATE AND ESTABLISH IN THE STATE TREASURY THE SMOKING PREVENTION AND CESSATION TRUST FUND, THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE TRUST FUND, AND THE PALMETTO HEALTH CARE SAFETY NET TRUST FUND, ALL SO AS TO RECEIVE DEPOSITS OF THE REVENUES FROM THE CIGARETTE SURTAX AS SPECIFIED; BY ADDING CHAPTER 62 TO TITLE 38 SO AS TO CREATE AND ESTABLISH THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE PLAN, PROVIDING FOR A PREMIUM CREDIT NOT TO EXCEED THREE THOUSAND DOLLARS TO AN ELIGIBLE INDIVIDUAL OR EMPLOYER TOWARD THE PURCHASE OF A QUALIFYING HEALTH INSURANCE PLAN, DESCRIBING ELIGIBILITY REQUIREMENTS AND THE CERTIFICATION PROCESS, DEFINING THE QUALIFYING INDIVIDUALLY OR EMPLOYER-SPONSORED INSURANCE PLANS, AND PROVIDING FOR ADMINISTRATION AND REPORTING BY THE DEPARTMENT OF INSURANCE; AND BY ADDING SECTION 38-74-75 SO AS TO CREATE THE PALMETTO HEALTH CARE SAFETY NET PROGRAM, ESTABLISHING A SELF-SUSTAINING AND FINANCIALLY INDEPENDENT PORTION OF THE PREMIUM ASSISTANCE POOL, AND PROVIDING FOR ELIGIBILITY REQUIREMENTS, ADMINISTRATION, AND REPORTING BY THE DEPARTMENT OF INSURANCE AND OPERATING GUIDELINES.

***Summary of Bill:***

Raises the State's Cig. Tax by 2.5 cents per stick (50 cents total), and uses the revenue for the following: Smoking Cessation, Department of Agriculture for branding State-grown crops, and the South Carolina Healthy Families Insurance Plan.

***Introduced:*** Click here to enter a date.      ***Received by Ways and Means:*** 2/19/2009

THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SC HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFITS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUCTED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT.

***Estimated Fiscal Impact:***

Revenue Loss of \$4,001,430 due to decrease in demand, with Revenue Gains of \$147,300,000 due to increased tax.

***Subcommittee Recommendation:***

Pending

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

# South Carolina Board of Economic Advisors

## Statement of Estimated State Revenue Impact

---

**Date:** February 20, 2009

**Bill Number:** H.B. 3584

**Authors:** Harrell; Bingham; Cooper; Harrison, *et. al.*

**Committee Requesting Impact:** House Ways & Means Committee

---

### Bill Summary

A bill to amend the Code of Laws of South Carolina, 1976, by adding Section 12-21-625 so as to impose a surtax on each cigarette in an amount of two and one-half cents, provide for the crediting of the revenue from the surtax to the Smoking Prevention and Cessation Trust Fund, the Department of Agriculture for marketing and branding state-grown crops and to assist in relief from natural disasters affecting state-grown crops, the South Carolina Healthy Families Insurance Trust Fund, and the Palmetto Health Care Safety Net Trust Fund, provide for reporting, payment, collection, and enforcement of the surtax, and define "cigarette"; to amend Section 12-21-620, relating to the original cigarette tax, so as to conform definitions; by adding Section 11-11-230 so as to create and establish in the state treasury the Smoking Prevention and Cessation Trust Fund, the South Carolina Healthy Families Insurance Trust Fund, and the Palmetto Health Care Safety Net Trust Fund, all so as to receive deposits of the revenues from the cigarette surtax as specified; by adding Chapter 62 to Title 38 so as to create and establish the South Carolina Healthy Families Insurance Plan, providing for a premium credit not to exceed three thousand dollars to an eligible individual or employer toward the purchase of a qualifying health insurance plan, describing eligibility requirements and the certification process, defining the qualifying individually or employer-sponsored insurance plans, and providing for administration and reporting by the Department of Insurance; and by adding Section 38-74-75 so as to create the Palmetto Health Care Safety Net Program, establishing a self-sustaining and financially independent portion of the premium assistance pool, and providing for eligibility requirements, administration, and reporting by the Department of Insurance and operating guidelines.

### REVENUE IMPACT <sup>1/</sup>

This bill is expected to generate \$147,300,000 in FY2009-10 after a loss of \$1,000,000 for stockpiling. This bill is expected to increase funds in the Smoking Prevention and Cessation Trust Fund by \$5,000,000 and by \$2,966,000 in the Department of Agriculture with the remaining funds to be allocated to the South Carolina Healthy Families Insurance Trust Fund and the Palmetto Health Care Safety Net Trust Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$4,001,430 in FY2009-10.

### Explanation

**Section 1.** This section would add Section 12-21-625 to impose 50-cent surtax on each pack of 20 cigarettes beginning July 1, 2009 and is expected to generate an estimated \$148,300,000 in FY 2009-10. On the advice of the Department of Revenue, we have calculated that the stockpiling of cigarettes from the state excise tax increase would remove an estimated \$1,000,000 of state excise tax revenue from FY2009-10 collections. After adjusting for a loss of \$1,000,000 for stockpiling, this section is expected to generate an estimated \$147,300,000 in FY 2009-10. The revenue of the surtax would be credited as follows: \$5,000,000 would be allocated to the Smoking Prevention and Cessation Trust Fund; one-cent from each pack, or an estimated \$2,966,000 would be credited to the Department of Agriculture to cause the marking or branding of South Carolina agricultural crops or produce as being grown in South Carolina when offered for sale in retail establishments; of the remaining annual revenue, an appropriate amount of funds would be allocated to the South Carolina Healthy Families Insurance Trust Fund and the Palmetto Health Care Safety Net Trust Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$4,001,430 in FY 2009-10.

## **South Carolina Board of Economic Advisors Statement of Estimated State Revenue Impact**

---

**Section 2.** This section amends Section 12-21-620 to provide a definition for the term "cigarette".

**Section 3.** This section would create three (3) separate and distinct trust funds. This section would create in the State Treasury a separate and distinct fund styled the Smoking Prevention and Cessation Trust Fund. Earnings and interest on the fund must be credited to the fund. Each fiscal year, \$5,000,000 credited to the Smoking Prevention and Cessation Trust Fund must be transferred to the Department of Health and Environmental Control to administer a statewide smoking prevention and cessation program. There is also created in the State Treasury a separate and distinct fund styled the South Carolina Healthy Families Insurance Trust Fund to receive an appropriate amount of revenue from the surtax on cigarettes. Earnings and interest on the fund must be credited to the fund. The Department of Insurance must transfer the appropriate amount of funds to the South Carolina Healthy Families Insurance Plan. There is also created in the State Treasury a separate and distinct fund styled the Palmetto Health Care Safety Net Trust Fund. Earnings and interest on the fund must be credited to the fund. Beginning July 1, 2011, and every July first thereafter, the State Treasurer shall make a transfer from the South Carolina Healthy Families Insurance Trust Fund to the Palmetto Health Care Safety Net Fund in an amount determined by the Board of Economic Advisors in accordance with Section 11-11-230.

**Section 4.** Of the funds transferred to the Department of Insurance from the South Carolina Healthy Families Insurance Trust Fund, the department would administer the South Carolina Healthy Families Insurance Plan. Beginning July 1, 2010, individuals meeting the eligibility requirements may receive an insurance premium credit of 75% of the actual cost of a qualifying insurance plan not to exceed \$3,000 per year. A qualified "small employer" may receive an insurance premium credit of 67% of the actual cost of a qualifying insurance plan not to exceed \$3,000 per year. Each year thereafter, the Department of Insurance may adjust the amount of the premium credit, but not to less than 50% of the actual cost of coverage. The qualified individual must earn at or less than 200% of the federal poverty level; has not been covered under a health insurance policy for at least twelve consecutive months before the application; is not eligible for or enrolled in Medicare, Medicaid, or any other state or federal government health insurance program; and is between the ages of 19 and 64 years.

**Section 5.** Of the funds transferred to the Department of Insurance from the Palmetto Health Care Safety Net Trust Fund, the department would administer the Palmetto Health Care Safety Net Program. Beginning July 1, 2011, qualified individuals that are at least 19 years of age earning less than 400% of the federal poverty level based on the person's family status may participate in a managed care, premium-assisted program on a first-come, first-served basis. The amount of the annual insurance premium credit changes as the amount of annual family or household incomes change relative to the federal poverty level.

**Section 6.** Except where otherwise stated, this act takes effect upon approval by the Governor.

/s/ WILLIAM C. GILLESPIE, PH.D.

William C. Gillespie, Ph.D.  
Chief Economist

**Analyst: Martin**

<sup>11</sup> This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.



HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

DRAFFIN/KUBALA  
MARCH 25, 2009

---

CLERK OF THE HOUSE

---

THE BUDGET AND FINANCE SUBCOMMITTEE PROPOSES THE  
FOLLOWING AMENDMENT No. TO H. 3584  
(DOCUME~1\AQUINOM\LOCALS~1\TEMP\XPGRPWISE\20221SD09):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING SECTION 12-21-625 OF THE 1976 CODE,  
AS CONTAINED IN SECTION 1, AND INSERTING:**

**/ SECTION 12-21-625. (A) EFFECTIVE JULY  
1, 2009, THERE IS IMPOSED A SURTAX ON  
CIGARETTES SUBJECT TO THE TAX IMPOSED  
PURSUANT TO SECTION 12-21-620(1) IN AN  
AMOUNT EQUAL TO TWO AND ONE-HALF CENTS  
ON EACH CIGARETTE.**

**(B) NOTWITHSTANDING ANOTHER PROVISION OF LAW PROVIDING FOR THE CREDITING OF THE REVENUES OF LICENSE OR OTHER TAXES, THE REVENUE OF THE SURTAX IMPOSED PURSUANT TO THIS SECTION MUST BE CREDITED AS FOLLOWS:**

**(1) EACH YEAR, FIVE MILLION DOLLARS TO THE SMOKING PREVENTION AND CESSATION TRUST FUND CREATED PURSUANT TO SECTION 11-11-230(A) AND THE REVENUE OF FIVE HUNDREDTHS OF A CENT OF THE SURTAX ON EACH CIGARETTE TO THE DEPARTMENT OF AGRICULTURE TO CAUSE THE MARKETING AND BRANDING OF SOUTH CAROLINA AGRICULTURAL CROPS OR PRODUCE AS BEING GROWN IN SOUTH CAROLINA WHEN OFFERED FOR SALE IN RETAIL ESTABLISHMENTS AND TO ASSIST IN RELIEF FROM NATURAL DISASTERS AFFECTING STATE-GROWN CROPS; AND**

**(2) THE REMAINING ANNUAL REVENUE TO THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE TRUST FUND CREATED PURSUANT TO**

**SECTION 11-11-230(B) AND THE PALMETTO HEALTH CARE SAFETY NET TRUST FUND CREATED PURSUANT TO SECTION 11-11-230(C).**

**(C) FOR ALL PURPOSES OF REPORTING, PAYMENT, COLLECTION, AND ENFORCEMENT, THE SURTAX IMPOSED BY THIS SECTION IS DEEMED TO BE IMPOSED PURSUANT TO SECTION 12-21-620.**

**(D) FOR PURPOSES OF THIS SECTION, 'CIGARETTE' MEANS:**

**(1) ANY ROLL FOR SMOKING CONTAINING TOBACCO OR ANY SUBSTITUTE FOR TOBACCO WRAPPED IN PAPER OR IN ANY SUBSTANCE OTHER THAN A TOBACCO LEAF; OR**

**(2) ANY ROLL FOR SMOKING CONTAINING TOBACCO OR ANY SUBSTITUTE FOR TOBACCO, WRAPPED IN ANY SUBSTANCE, WEIGHING THREE POUNDS PER THOUSAND OR LESS, HOWEVER LABELED OR NAMED, WHICH BECAUSE OF ITS APPEARANCE, SIZE, TYPE OF TOBACCO USED IN THE FILLER, OR ITS PACKAGING, PRICING, MARKETING, OR LABELING, IS LIKELY TO BE**

**OFFERED TO, OR PURCHASED BY, CONSUMERS AS  
A CIGARETTE DESCRIBED IN ITEM (1)./**

**AMEND THE BILL FURTHER, AS AND IF AMENDED, BY STRIKING  
SUBSECTION (B) OF SECTION 12-21-620 OF THE 1976 CODE, AS  
CONTAINED IN SECTION 2 AND INSERTING:**

**/ (B) AS USED IN THIS SECTION, ‘CIGARETTE’ MEANS:**

**(1) ANY ROLL FOR SMOKING CONTAINING TOBACCO OR ANY  
SUBSTITUTE FOR TOBACCO WRAPPED IN PAPER OR IN ANY SUBSTANCE  
OTHER THAN A TOBACCO LEAF; OR**

**(2) ANY ROLL FOR SMOKING CONTAINING TOBACCO OR ANY  
SUBSTITUTE FOR TOBACCO, WRAPPED IN ANY SUBSTANCE, WEIGHING  
THREE POUNDS PER THOUSAND OR LESS, HOWEVER LABELED OR  
NAMED, WHICH BECAUSE OF ITS APPEARANCE, SIZE, TYPE OF TOBACCO  
USED IN THE FILLER, OR ITS PACKAGING, PRICING, MARKETING, OR  
LABELING, IS LIKELY TO BE OFFERED TO, OR PURCHASED BY,  
CONSUMERS AS A CIGARETTE DESCRIBED IN ITEM (1) OF THIS  
SUBSECTION. /**

**RENUMBER SECTIONS TO CONFORM.**

**AMEND TITLE TO CONFORM.**

1  
2  
3  
4  
5  
6  
7  
8  
9

## **A BILL**

10

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, BY ADDING SECTION 12-21-625 SO AS TO IMPOSE A  
13 SURTAX ON EACH CIGARETTE IN AN AMOUNT OF TWO  
14 AND ONE-HALF CENTS, PROVIDE FOR THE CREDITING  
15 OF THE REVENUE FROM THE SURTAX TO THE SMOKING  
16 PREVENTION AND CESSATION TRUST FUND, THE  
17 DEPARTMENT OF AGRICULTURE FOR MARKETING AND  
18 BRANDING STATE-GROWN CROPS AND TO ASSIST IN  
19 RELIEF FROM NATURAL DISASTERS AFFECTING STATE-  
20 GROWN CROPS, THE SOUTH CAROLINA HEALTHY  
21 FAMILIES INSURANCE TRUST FUND, AND THE  
22 PALMETTO HEALTH CARE SAFETY NET TRUST FUND,  
23 PROVIDE FOR REPORTING, PAYMENT, COLLECTION,  
24 AND ENFORCEMENT OF THE SURTAX, AND DEFINE  
25 "CIGARETTE"; TO AMEND SECTION 12-21-620, RELATING  
26 TO THE ORIGINAL CIGARETTE TAX, SO AS TO CONFORM  
27 DEFINITIONS; BY ADDING SECTION 11-11-230 SO AS TO  
28 CREATE AND ESTABLISH IN THE STATE TREASURY THE  
29 SMOKING PREVENTION AND CESSATION TRUST FUND,  
30 THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE  
31 TRUST FUND, AND THE PALMETTO HEALTH CARE  
32 SAFETY NET TRUST FUND, ALL SO AS TO RECEIVE  
33 DEPOSITS OF THE REVENUES FROM THE CIGARETTE  
34 SURTAX AS SPECIFIED; BY ADDING CHAPTER 62 TO  
35 TITLE 38 SO AS TO CREATE AND ESTABLISH THE SOUTH  
36 CAROLINA HEALTHY FAMILIES INSURANCE PLAN,  
37 PROVIDING FOR A PREMIUM CREDIT NOT TO EXCEED  
38 THREE THOUSAND DOLLARS TO AN ELIGIBLE  
39 INDIVIDUAL OR EMPLOYER TOWARD THE PURCHASE  
40 OF A QUALIFYING HEALTH INSURANCE PLAN,  
41 DESCRIBING ELIGIBILITY REQUIREMENTS AND THE  
42 CERTIFICATION PROCESS, DEFINING THE QUALIFYING

1 INDIVIDUALLY OR EMPLOYER-SPONSORED INSURANCE  
2 PLANS, AND PROVIDING FOR ADMINISTRATION AND  
3 REPORTING BY THE DEPARTMENT OF INSURANCE; AND  
4 BY ADDING SECTION 38-74-75 SO AS TO CREATE THE  
5 PALMETTO HEALTH CARE SAFETY NET PROGRAM,  
6 ESTABLISHING A SELF-SUSTAINING AND FINANCIALLY  
7 INDEPENDENT PORTION OF THE PREMIUM ASSISTANCE  
8 POOL, AND PROVIDING FOR ELIGIBILITY  
9 REQUIREMENTS, ADMINISTRATION, AND REPORTING  
10 BY THE DEPARTMENT OF INSURANCE AND OPERATING  
11 GUIDELINES.

12

13 Be it enacted by the General Assembly of the State of South  
14 Carolina:

15

16 SECTION 1. Article 5, Chapter 21, Title 12 of the 1976 Code is  
17 amended by adding:

18

19 "Section 12-21-625. (A) Effective July 1, 2009, there is  
20 imposed a surtax on cigarettes subject to the tax imposed pursuant  
21 to Section 12-21-620(1) in an amount equal to two and one-half  
22 cents on each cigarette or fifty cents for each pack of cigarettes.

23 (B) Notwithstanding another provision of law providing for the  
24 crediting of the revenues of license or other taxes, the revenue of  
25 the surtax imposed pursuant to this section must be credited as  
26 follows:

27 (1) each year, five million dollars to the Smoking Prevention  
28 and Cessation Trust Fund created pursuant to Section  
29 11-11-230(A) and one cent from each pack of cigarettes to the  
30 Department of Agriculture to cause the marketing and branding of  
31 South Carolina agricultural crops or produce as being grown in  
32 South Carolina when offered for sale in retail establishments and  
33 to assist in relief from natural disasters affecting state-grown crops;  
34 and

35 (2) the remaining annual revenue to the South Carolina  
36 Healthy Families Insurance Trust Fund created pursuant to Section  
37 11-11-230(B) and the Palmetto Health Care Safety Net Trust Fund  
38 created pursuant to Section 11-11-230(C).

39 (C) For all purposes of reporting, payment, collection, and  
40 enforcement, the surtax imposed by this section is deemed to be  
41 imposed pursuant to Section 12-21-620.

42 (D) For purposes of this section, 'cigarette' means:

- 1 (1) any roll for smoking containing tobacco wrapped in  
2 paper or in any substance other than a tobacco leaf; or  
3 (2) any roll for smoking containing tobacco, wrapped in any  
4 substance, weighing three pounds per thousand or less, however  
5 labeled or named, which because of its appearance, size, type of  
6 tobacco used in the filler, or its packaging, pricing, marketing, or  
7 labeling, is likely to be offered to, or purchased by, consumers as a  
8 cigarette described in item (1).”  
9

10 SECTION 2. Section 12-21-620 of the 1976 Code is amended to  
11 read:

12  
13 “Section 12-21-620. (A) There shall be levied, assessed,  
14 collected, and paid in respect to the articles containing tobacco  
15 enumerated in this section the following amounts:

16 (1) upon all cigarettes made of tobacco or any substitute for  
17 tobacco, three and one-half mills on each cigarette;

18 (2) upon all tobacco products, as defined in Section  
19 12-21-800, five percent of the manufacturer’s price.

20 Manufacturer’s price as used in this section is the established  
21 price at which a manufacturer sells to a wholesaler.

22 (B) As used in this section, ‘cigarette’ means:

23 (1) any roll for smoking containing tobacco wrapped in  
24 paper or in any substance other than a tobacco leaf; or

25 (2) any roll for smoking containing tobacco, wrapped in any  
26 substance, weighing three pounds per thousand or less, however  
27 labeled or named, which because of its appearance, size, type of  
28 tobacco used in the filler, or its packaging, pricing, marketing, or  
29 labeling, is likely to be offered to, or purchased by, consumers as a  
30 cigarette described in item (1) of this subsection.”  
31

32 SECTION 3. Article 1, Chapter 11, Title 11 of the 1976 Code is  
33 amended by adding:

34  
35 “Section 11-11-230. (A) There is created in the State Treasury  
36 the Smoking Prevention and Cessation Trust Fund. This fund is  
37 separate and distinct from the general fund of the State and all  
38 other funds. Earnings and interest on this fund must be credited to  
39 it and any balance in this fund at the end of a fiscal year carries  
40 forward in the fund in the succeeding fiscal year. The trust fund  
41 must transfer five million dollars annually to the Department of  
42 Health and Environmental Control to administer a statewide  
43 smoking prevention and cessation program.

1 (B) There is created in the State Treasury the South Carolina  
2 Healthy Families Insurance Trust Fund. This fund is separate and  
3 distinct from the general fund of the State and all other funds.  
4 Earnings and interest on this fund must be credited to it and any  
5 balance in this fund at the end of a fiscal year carries forward in  
6 the fund in the succeeding fiscal year. The trust fund must transfer  
7 the appropriate amount of money annually to the Department of  
8 Insurance to fund the South Carolina Healthy Families Insurance  
9 Plan as provided in Chapter 62 of Title 38.

10 (C) There is created in the State Treasury the Palmetto Health  
11 Care Safety Net Trust Fund. This fund is separate and distinct  
12 from the general fund of the State and all other funds. Earnings on  
13 this fund must be credited to it and any balance in this fund at the  
14 end of a fiscal year carries forward in the fund in the succeeding  
15 fiscal year. Beginning July 1, 2011, and every July first thereafter,  
16 the State Treasurer shall make a transfer from the South Carolina  
17 Healthy Families Insurance Trust Fund to the Palmetto Health  
18 Care Safety Net Trust Fund in an amount determined by the Board  
19 of Economic Advisors. The Board of Economic Advisors shall  
20 determine the amount to be transferred by calculating the  
21 difference between ninety percent of the balance of the South  
22 Carolina Healthy Families Insurance Trust Fund on July first, less  
23 the amount of projected premium assistance payments in the  
24 following twelve months.”

25

26 SECTION 4. Title 38 of the 1976 Code is amended by adding:

27

28

#### “CHAPTER 62

29

30

#### The South Carolina Healthy Families

31

#### Insurance Plan

32

33 Section 38-62-10. This chapter may be cited as the ‘South  
34 Carolina Healthy Families Insurance Plan’.

35

36 Section 38-62-20. For the purposes of this section:

37 (A) ‘Department’ means the South Carolina Department of  
38 Insurance.

39 (B) ‘Federal poverty level’ means the federal poverty level  
40 guidelines published annually by the United States Department of  
41 Health and Human Services.

42 (C) ‘Health insurer’ means an insurance company, a health  
43 maintenance organization, a community health plan approved by



1 the Department of Health and Human Services, and any other  
2 entity providing health insurance coverage, as defined in Section  
3 38-71-670(6), which is licensed to engage in the business of  
4 insurance in this State and which is subject to state insurance  
5 regulation; and Medicaid managed care organizations qualified to  
6 offer services through the Department of Health and Human  
7 Service's Healthy Connections Program.

8 (D) 'Healthy Families Insurance Trust Fund' means the South  
9 Carolina Healthy Families Insurance Trust Fund created pursuant  
10 to Section 11-11-230(B).

11 (E) 'Participant' means an individual who has been issued a  
12 certificate of eligibility by the Department of Insurance and has  
13 purchased a qualifying health insurance plan within ninety days of  
14 the date of issue of the certificate.

15 (F) 'Program' means the South Carolina Healthy Families  
16 Insurance Plan.

17 (G) 'Qualifying health plan' means any health insurance policy  
18 or health benefit plan offered by a health insurer that provides  
19 health insurance coverage, as defined in Section 38-71-670(6), or a  
20 community health plan approved by the Department of Health and  
21 Human Services that has been approved by the Department of  
22 Insurance as a qualifying plan pursuant to Section 38-62-30.

23 (H) 'Small employer' means, in connection with a health  
24 insurance plan with respect to a calendar year and a plan year, any  
25 person, firm, corporation, partnership, association, or employer, as  
26 defined in Section 3(5) of the Employee Retirement Income  
27 Security Act of 1974, that is actively engaged in business that, on  
28 at least fifty percent of its working days during the preceding  
29 calendar year, employed no more than twenty-five eligible  
30 employees or employed an average of not more than twenty-five  
31 employees on business days during the preceding calendar year,  
32 and who employs at least two employees on the first day of the  
33 plan year. For purposes of this chapter, the number of employees  
34 must be determined by adding together all employees of the small  
35 employer and all employees of a parent, subsidiary, or affiliated  
36 company of the small employer.

37  
38 Section 38-62-30. No later than January 1, 2010, the  
39 department shall issue regulations outlining the minimum actuarial  
40 value a health insurance policy, health benefit plan, or community  
41 health plan must meet to be a qualifying health plan for inclusion  
42 in the program.  
43

1 Section 38-62-40. Beginning on July 1, 2010, an individual  
2 meeting the eligibility requirements of this chapter may receive a  
3 premium credit of seventy-five percent of the actual cost of a  
4 qualifying plan, not to exceed three thousand dollars a year. A  
5 small employer may receive a premium credit of sixty-seven  
6 percent of the actual cost of a qualifying health plan, not to exceed  
7 three thousand dollars a year. Annually after that, the department  
8 may adjust the amount of premium credit, except that the amount  
9 of credit must not be less than fifty percent of the actual cost of  
10 coverage.

11

12 Section 38-62-50. To be eligible for the premium credit, an  
13 individual must receive a certificate of eligibility from the  
14 department. The department shall develop the form and manner  
15 for an individual to apply to the department for a certificate and  
16 shall make the form readily available to health insurance agents  
17 and other persons authorized to sell health insurance in this State.  
18 For purposes of determining the taxpayer's federal poverty level,  
19 the department, minimally, shall require a copy of the applicant's  
20 state income tax return for the previous year and the applicant's  
21 W-2 form. The department also shall require the applicant to sign  
22 a verification under oath, subject to penalties of perjury, that the  
23 applicant meets the eligibility criteria for the program pursuant to  
24 Section 38-62-60. The department shall implement appropriate  
25 safeguards and use available existing resources to verify an  
26 applicant's uninsured status. The department shall pursue the  
27 recoupment of any premium credit provided to an individual filing  
28 a false application.

29

30 Section 38-62-60. (A) The department shall issue an applicant  
31 a certificate, if the department determines that:

32 (1) the applicant's family or household income is less than  
33 two hundred percent of the federal poverty level based on the  
34 applicant's family status;

35 (2) the applicant is a citizen of the United States and has  
36 been a resident of this State for the twelve-month period  
37 immediately preceding the application;

38 (3) the applicant is not eligible for or enrolled in Medicare,  
39 Medicaid, or other state or federal government health insurance  
40 program;

41 (4) the applicant is between the ages of nineteen and  
42 sixty-four; and

1 (5) the department has not yet issued certificates to the  
2 maximum number of eligible individuals pursuant to subsection  
3 (C).

4 (B) Each eligible person in a qualifying household must apply  
5 to receive an individual certificate.

6 (C) The department shall issue eligible individuals certificates  
7 in the order in which the application is received. The maximum  
8 number of eligible individuals receiving premium credit payments  
9 is reached when the anticipated amount of claims for premium  
10 credit payments reaches ninety percent of the amount of money  
11 allocated for premium credit payments. The director of the  
12 department shall establish a waiting list for applicants that are  
13 otherwise qualified for registration but cannot be registered  
14 because the maximum number of individuals is reached. The  
15 director shall notify all individuals who applied for a certificate  
16 and who were not issued a certificate the reason that they did not  
17 receive a certificate and whether they were placed on the waiting  
18 list.

19  
20 Section 38-62-70. The certificate issued pursuant to Section  
21 38-62-60 is valid for the twelve months following the purchase of  
22 a qualifying health plan, if the plan is purchased within ninety days  
23 of the date the certificate was issued.

24  
25 Section 38-62-80. (A) The department shall develop the form  
26 and manner for a person to apply for a renewal certificate and shall  
27 make the form readily available to health insurance agents and  
28 other persons authorized to sell health insurance in this State.  
29 Participants are responsible for obtaining and completing the form  
30 and forwarding it and documentation required by the department.  
31 The department shall process renewal applications along with new  
32 applications in accordance with Section 38-62-60. Priority must  
33 be given to renewal applications.

34 (B) In the case of individually sponsored insurance, sixty days  
35 before the expiration of the policy term, the insurer must send the  
36 insured a certificate renewal application promulgated by the  
37 department. The insured is responsible for completing the form  
38 and forwarding it and documentation required by the department.

39 (C) In the case of employer-sponsored insurance, sixty days  
40 before the expiration of the policy term, the employer must send  
41 the insured a certificate renewal application promulgated by the  
42 department. The insured is responsible for completing the form  
43 and forwarding it and documentation required by the department.

1 (D) The department may issue a renewal certificate only if the  
2 applicant remains eligible.

3  
4 Section 38-62-90. (A) In the case of individually sponsored  
5 insurance, the department shall provide the premium credit directly  
6 to the individual's choice of participating qualifying insurers. To  
7 qualify under individually sponsored insurance, an individual must  
8 not be enrolled under employer-sponsored insurance. To obtain  
9 the premium credit, an insurer must present a valid certificate to  
10 the department. The release of the premium credit to the insurer is  
11 contingent upon the insurer submitting proof of the participant  
12 satisfying his share of the premium liability. The amount paid in  
13 premium credit may not exceed three thousand dollars each year  
14 for each eligible participant. The department shall make quarterly  
15 premium credit payments to insurers.

16 (B)(1) In the case of employer-sponsored insurance, the  
17 department shall provide the premium credit directly to the  
18 employer of (i) the participant or (ii) the eligible covered  
19 dependent of the participant. To qualify for the premium credit, an  
20 employer must provide at least seventy-five percent of the cost of  
21 coverage. To obtain the premium credit, an employer must present  
22 a valid certificate to the department for each covered eligible  
23 person. The amount paid in premium credit to a small employer  
24 may not exceed three thousand dollars each year for each eligible  
25 participant. The release of the premium credit to the employer is  
26 contingent upon the employer submitting proof of the participant  
27 and the small employer satisfying his respective share of the  
28 premium liability. The department shall make quarterly premium  
29 credit payments to small employers.

30 (2) If the covered participant ceases to be covered by the  
31 employer's plan, the employer must return the certificate to the  
32 participant and notify the department that the employer no longer  
33 covers the participant under a qualifying health plan. The  
34 remaining value of the certificate may be used to obtain a  
35 qualifying health plan.

36  
37 Section 38-62-100. This chapter is not intended, nor shall it  
38 operate, to guarantee health insurance coverage to any individual.

39  
40 Section 38-62-110. The department may charge the South  
41 Carolina Healthy Families Insurance Trust Fund a quarterly  
42 administrative fee of up to one percent of the amount credited to

1 the South Carolina Healthy Families Insurance Trust Fund in the  
2 preceding quarter.

3  
4 Section 38-62-120. The department shall provide an annual  
5 report on the South Carolina Healthy Families Insurance Trust  
6 Fund to the Governor, the Chairman of the Senate Finance  
7 Committee, the Chairman of the House Ways and Means  
8 Committee, the Chairman of the Senate Banking and Insurance  
9 Committee, the Chairman of the House Labor, Commerce and  
10 Industry Committee, and the Board of Economic Advisors. The  
11 report shall provide, at a minimum, a general description of the  
12 services provided and populations served, the number of people  
13 served, the average cost for each person, the additional  
14 administration costs of the programs funded by the South Carolina  
15 Healthy Families Insurance Trust Fund, and a three-year forecast  
16 of the utilization of the fund.

17  
18 Section 38-62-130. The Department of Insurance shall develop  
19 and implement a public awareness program for the South Carolina  
20 Healthy Families Insurance Plan.

21  
22 Section 38-62-140. The Department of Health and Human  
23 Services shall submit and negotiate any state plan amendments,  
24 waiver applications, or other appropriate requests to the Centers  
25 for Medicare and Medicaid Services (CMS) necessary to allow the  
26 use of federal Medicaid funding to accomplish the purposes  
27 outlined in this section. The department shall submit the initial  
28 request no later than January 1, 2011.”

29  
30 SECTION 5. Chapter 74, Title 38 of the 1976 Code is amended  
31 by adding:

32  
33 “Section 38-74-75. (A) There is created the Palmetto Health  
34 Care Safety Net Program of the pool. The program must be  
35 funded by the Palmetto Health Care Safety Net Trust Fund created  
36 in Section 11-11-230(C), and must be self sustaining and  
37 financially independent from the remainder of the pool.

38 (B) Any person eligible for pool coverage may opt to  
39 participate in the Palmetto Health Care Safety Net Program of the  
40 pool, if the person also:

41 (1) is at least nineteen years of age;

1 (2) provides evidence of United States citizenship and of  
2 South Carolina residency for the sixty months immediately  
3 preceding the application for coverage;

4 (3) provides evidence of family or household annual income  
5 of less than four hundred percent of the poverty level based on the  
6 person's family status;

7 (4) agrees to participate in the Palmetto Health Care Safety  
8 Net Program and to comply with all care coordination plans, case  
9 management procedures, and managed care criteria of the program  
10 developed by the department; and

11 (5) is not eligible for or enrolled in Medicare, Medicaid, or  
12 other state or federal government health insurance program.

13 (C) The department shall oversee the Palmetto Health Care  
14 Safety Net Program. The department also shall (i) select a  
15 qualified entity or entities, in accordance with the procedures  
16 contained in Section 38-74-40, to administer the program, and (ii)  
17 promulgate regulations necessary to implement the provisions of  
18 this section.

19 (D) The benefits under the Palmetto Health Care Safety Net  
20 Program must be equivalent to the benefit plan currently offered  
21 by the existing pool that has the highest actuarial value; except that  
22 the benefit plan under the Palmetto Health Care Safety Net  
23 Program must incorporate all of the requirements in Section  
24 38-74-75(B).

25 (E) Participation in the Palmetto Health Care Safety Net  
26 Program is limited to the funds available in the Palmetto Health  
27 Care Safety Net Trust Fund so as to prevent any loss in program  
28 operations. The department or its contracted entity shall accept  
29 and process applications, and award the premium assistance  
30 provided for in this section, in the order in which the applications  
31 are received. The department shall establish a waiting list if there  
32 are insufficient funds available to allow all applicants to  
33 participate. The department also may implement a maximum limit  
34 on individual coverage to prevent an operating loss. The program  
35 must not be funded in any part by the funding mechanisms of the  
36 existing pool. The department may charge the Palmetto Health  
37 Care Safety Net Trust Fund a quarterly administrative fee of up to  
38 one percent of the amount credited to the Palmetto Health Care  
39 Safety Net Trust Fund in the preceding year.

40 (F) Beginning on July 1, 2011, and then only to the extent  
41 sufficient funds exist in the Palmetto Health Care Safety Net Trust  
42 Fund, each participant in the Palmetto Health Care Safety Net

1 Program is entitled to the following premium schedule according  
2 to the prevailing federal poverty level:

3 (a) for annual family or household incomes less than one  
4 hundred percent of federal poverty level, the annual premium is  
5 one thousand dollars;

6 (b) for annual family or household incomes one hundred  
7 percent and above but less than two hundred percent of federal  
8 poverty level, the annual premium is two thousand dollars;

9 (c) for annual family or household incomes two hundred  
10 percent and above but less than three hundred percent of federal  
11 poverty level, the annual premium is three thousand dollars; and

12 (d) for annual family or household incomes three hundred  
13 percent and above but less than four hundred percent of federal  
14 poverty level, the annual premium is four thousand dollars.

15 (G) The department may initiate periodic transfers in the  
16 amount of the approved premium assistance from the Palmetto  
17 Health Care Safety Net Trust Fund to the administering entity of  
18 the Palmetto Health Care Safety Net Program to be credited  
19 against the premiums owed by the program and any additional  
20 funds to maintain the solvency of the program.

21 (H) The establishment of rates, forms, or procedures or other  
22 joint or collective action required by this section must not be the  
23 basis of any legal action, criminal or civil liability, or penalty  
24 against the program. A cause of action does not arise against the  
25 program's agents, employees, or representatives, for any good faith  
26 act or omission in the performance of their powers and duties  
27 pursuant to this section.

28 (I) The department must provide an annual report on the  
29 Palmetto Health Care Safety Net Program of the pool to the  
30 Governor, the Chairman of the Senate Finance Committee, the  
31 Chairman of the House Ways and Means Committee, the  
32 Chairman of the Senate Banking and Insurance Committee, the  
33 Chairman of the House Labor, Commerce and Industry  
34 Committee, and the Board of Economic Advisors. The report shall  
35 provide, at a minimum, a general description of the services  
36 provided and populations served, the number of people served, the  
37 average cost for each person, the additional administration costs of  
38 the programs funded by the South Carolina Palmetto Health Care  
39 Safety Net Trust Fund, and a three-year forecast of the utilization  
40 of the fund."

41

1 SECTION 6. Except where otherwise provided, this act takes  
2 effect upon approval by the Governor.  
3 ----XX----  
4